## NATURA BREVIUM

OF

The Most Reverend JUDGE,

# Mr. Anthony Fitz-herbert;

· Corrected and Revised.

Whereunto are added,

The Authorities in Law, and some other Cases and Notes collected by the Translator out of the Year Books and Abridgments.

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A New and Exact TABLE of the most Material things contained therein.

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# PREFACE

Composed by the Reverend Judge,

Mr. Anthony Fitz-herbert.



N every Art and Science there are certain Rules and Foundations to which a man ought to give credit, and which he cannot deny.

In like manner there are divers Maxims and Fundamentals in the knowledge of the Common Laws of the Land, which a man ought for to believe very necessary for those who will understand the same Law, especially at the beginning of their Studies: for upon those Fundamentals the whole Law doth depend. For which purpose in time past there was composed a very profitable Book call'd The Register, which doth contain sundry Principles, by which he must be well instructed who would study the Law.

A 2

And

#### THE PREFACE.

And also for that purpose was there composed by a Learned man a Book called Natura Brevium, which Book doth declare and set forth the Diversities and Natures of many Original Writs, with their Process; which Book helped much to the understanding not only of the Register, but also of the Law of the Land. But because of late time that Book bath been translated into the English Tongue, and many things are therein which are not according to the Law of the Land, and many other things are omitted which are very profitable and necessary for the understanding of the Law; for that cause is this Work composed and published. Wherein if there be any thing against the Opinion of the Sages who have the Administration of the Laws, the request of bim who hath taken the pains to make this Treatife is, that they would correct and amend the same, as they shall see good, according to the Law.

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FITZ-

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## FITZ-HERBERT HIS NATURA BREVIUM

## Writ of Right Patent.



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HE natures of the Original Writs are to he shewed and declared, according to the manner and form as they are in order written and set down in the Regifter, which shall be expressed and specified in form following.

And first, because the writ of Right Patent is in its nature the highest Writ in Law, the nature of that Writ shall be first declared, and

where it lieth.

This Writ ought to be brought of Lands or Tenements, 40 E.3.\$. and not of Advowson, or of Conmon; and lieth only of an Estate in Fee-simple, and not for him who hath a lesser Estate, as Tenant in tail, Tenant in Frank-marriage, or Tenant for life: for these Tenants shall not have a Writ of Right Patent.

C And this Writlieth properly where a man is seised in Fee- 11 Aff. 17. fimple, and another recovereth the Land against him by per (wiam; Default in a Pracipe quod reddat : now he who hath loft by a man reco-D Default ought to fue this Writ. Or is a man feifed in Fee- vered a fimple die seised of such Estate, and a Stranger doth abate gainst the fimple die seised of such Estate, and a Stranger dott abate. Heir by Deand entreth into the Land, and desorceth the Heir; the Heir seisel, and he may fue this Writ against the Tenant of the Free-hold of brought a

the same Land, or an Assise of Mortdauntcester.

And this Writ ought to be brought against him who hath cester. a Free-hold at least in the Land, and not against Tenants for years, Tenants by Statute-Merchant, Tenants by Elegit, nor Tenants by Statute-staple; but it ought to be brought against those Tenants who have an Estate in Fee-simple in the lands, or an Estate-tail, or for term of life at the least. And

And this Writ is always Patent, and not Close, as other F Writs are. And if the Lands be holden of other persons than of the King or of the Queen, then this Writ shall be directed unto the Lord himself of whom the Lands or Tenements are so holden, if the Lord be not out of the Realm; for then it shall be directed unto the Lord's Baily; and then the Chancellour of England ought to be certified thereof. And if a man be elected Bishop, and a Writ of Right Patent is to be sued in the Court of the Mannor of the said Bishop, the Writ shall be directed unto the Bailies of the Elect, and not unto the elect Bishop himself. And this Writ is as a Commission unto the Lord, or unto the Eaily of the Mannor, that they shall do Right. And the form of the Writ directed unto the Lord himself is such:

Henricus Dei gratia, &c. Henrico Comiti Lanc. salutem, G Pracipim' tibi, quod sine dilatione plenum restum teneas A de B de uno mesuage. xx. acris terr' cum pertir' in I, qua clamat tenere de te per liberum Servitium unius denarti per ann', pro omni Servitio, quod W de T ei desorcat; & nist seceris, Vic Nottingham saciat, nè amplius inde clamorem audiamus pro di-

fectu recti. Tefte, oc.

And if the Lord be out of the Realm, then the form of H
the Writ which shall be directed unto his Bailies shall be
such:

Rex Ballivis H. Comitis Derb. Honor' de P. in Com. Derb. falutem. Præcipimus vobis, quòd fine dilatione plenum rest' teneatis A de B de uno mesuag. & xx. acris terræ cum pertin. in I, quæ clamat tenere de disto Dom. vestro per liberum Servit', faciend. sestam ad curiam præd. Domini vestri Honor. præd', in Comitatu præd', de tribus septimanis in tres septimanas, pro omni Servitio, & c. ut supra.

And by that it appeareth, that in a Writ of Right Patent I he must express by what Services the Lands are holden, &c. And if the Lands be holden of the King or of the Queen, as of an Honour, or in Burgage, then the Writ shall be directed unto the Kings or Queens Railies, and the Writ shall be

fuch:

Henricus Dei gratia Rex, & c. Ballivis suis Lincoln' salutem. Præcipimus vobis, quod sine dilatione plenum rectum teneatis. A de B de uno messagio cum pertinen' in Lincol', quod clamat tenere de nobis per liberum Servitium unius denarii per annum proomni Servitio, quod W de B ei desorc', ne amplius inde clamorem audiamus, pro deseiturecti, & c.

And if a man fue a Writof Right Patent of Lands or Tencinents which are holden by a Enights fee, then the form

of.

[2.]

of the Writ shall be: De uno mesuag. & x.acr.terra, &c. quæ clamat tenere de te per Servic' feod' unius Militis pro omni Servicio.

And the Writ of Right lieth of a passage over the water of Thames, and of passure for 100 Sheep, and of the Rent of 1 l. of Ginger; thus: De uno mes, decemacristerra, novem solidat. redd, & passage outer a quam Tamisia, & passura ad cent. oves, cum pertin. in W; & de redditu unius libra zinziberis, unius libra canell, unius rosa, unius paris calcarium deauratorum, & de tertia parte unius gardini, cum pertinen. in N; qua clamat tenere de nobis per liberum Servitium, inveniend. nobis una cum participibus suis quinque naves ad transitum no-

ftrum, ad mandatum noftrum, pro omni Servitio, &c.

And if the Lands of any Lord be in the King for the Nonage of the Heir, and a Writ of Right is to be brought in the Court of the Mannor, where the King hath committed the Wardship of the Lands to another; the Writ of Right shall be directed unto the Bailies of the Gardian to whom it is committed, or unto the Gardian himself, if he hath the Land in Ward in his own right, and by reason of the Seignory that the Heir is in his Ward. And the forms of the Writs in the Register are thus : Rex Ball.custod.terra & hared. A de B. Or thus : Ballivis custod.terra A de B.And this Writ is where the Gardian hath only the Wardship of the Land, and not of the Heir,&c. And unto the Gardian himself the Writ is, Rex custod. terræ & hæred. B falutem. Præcipim.tibi. &c.quod clamat tenere de prædict.hær', &c. And if the Heir hath no Court for the poorness of the Land, that it is of so small value, then the Writ shall be directed unto the chief Lord, as chief Lord, and not as a Gardian; and then the Writ shall lay, Et que de ipso clamat tenere, & c. and shall not say as Gardian.

And it appeareth that a man shall have a Writ of Right

of a Knights Fee; and the Writ shall be such:

B Rex A de B salut, & Præcipimus tibi, quod, & c. W, & c. de Servitio unius feod. Militis cum pertin. in W, quod clamat tenere, & c. per Servitium unius paris calcarium deaurator, pro omni Servitio, & c. or, per Servitium inveniend. hominem equitem vel peditem, ad eundum tecum in exercitu Wallix, ad sumptum tuum & ad costum, & c. pro omni Servitio. Or thus: per liberum Servitium, portand. Brevia tua ad sumptum tuum & ad costum tuum salum on salum on

And there is an order set in the Register, when a man demandeth divers parcels of Land in his Writ which are of divers natures, which parcel shall be first specified in the

F 2 Writ.

## Writ of Right Patent.

Writ, and what parcel shall be next unto that, and then what parcel shall be next to that, and so of all the parcels: and that appeareth by the two verses following:

faagium,um,lendinum,lumbare,dinum,ra,tum,tura, cus,ra, Mes. toft mo co gar ter pra paff bof brue mora. ria, cus, tum, caria, ditus,

8 Aff. 24. in which Affife (Bofous) 7 E. 6. Dier 84.

Junca marif alne pif red fectare priora. And if a man in his Writ will demand 20 Houses . and was pur be- 10 acres of Land, and 10 acres of Meadow, and 10 acres of fore Pasture, Pasture, and divers other parcels; and afterwards in the same yet good, v. Writ he will demand the moiety or the third part of one House, or of one acre of Land, or of Meadow, or of Pasture; then the form of the Writ is, to be put in the beginning of the Writ the whole parcel, and in the end of the Writ the moiety, or the third part, &c. thus: Quod plenum rettum, &c. de uno mesuagio, uno molendino, uno gardino, medietate unius mesuag. unius acræ terræ, cum pertinen', excepta I.acra terræin N, &c. fo as the Exception shall alwaies be in the end of the Demand.

And a Writ of Right may be brought against divers Te- D nants who hold their Lands feverally; and then the form of the Writ is, Rex A B, &c. Pracipimus tibi, quod, &c. plenum rectum teneas A de xx. acristerra cum pertinent.in N,quas clamat, oc. unde Fr. acr', & S tres acras, & C vij. acras ters ei detors'. And so the word [Land] shall be in the end to him that shall be supposed last Deforceor, &c.

And if a Writ of Right be brought in the Court of any E Bishop or Abbot, it shall be then directed to the same Bi-Shop thus: Rer, Sec. venerabil in Christo Patri Gulielmo eadem gratia Archiepiscopo Cantuariensi, totius Anglia Primati, salut'. Mandamus vobis, quod fine dilatione, &c. quod clamat

tenere de vobis per liberum Servitium, oc. And if it be directed unto an Abbot, then the Writ shall

fay, quod clamat tenere de te, oc.

And if in the time of the Vacation of any Bishoprick a Writ of Right shall be brought in the Court of any Lands which are of the Bishoprick, which are in the King's hands by reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the King's Baily, or unto the Baily of him who is the Bishop elect; and the form of the Writ is fuch: Rex ballivis Archiepifcopat. Ebor.de C. falut'. Or thus: Rex bal'ivis H. Elect. Lincoln' de H. falut'. Pracipimus vobis, oc. quod clamat tenere de prædict. Archiepiscop'. Or thus, if it be directed unto the Bailies of the Bishop elect : quod clamtenere de prad' Domino vestro per Servic', Oc. But

But the Lord may give licence unto his Tenant to fue his Writ of Right in the King's Court, or the Common Pleas, before the Justices; and that as well after the Writ purchafed and returned in the Common Pleas, as before the Writ purchased and sued And the form of the Writ when it shall be fued in the Common Pleas by licence of the Lord shall be fuch : Rex Vic', &c. Precipe A, quod juste, &c. redd. C unum mesuage cum pertin. in M, quod clamat esse jus & hæreditatem fuam, & unde querit. quod præd. A ei injufte deforceat; & nife fecerit, & prædict. C fecerit te fecurum de chamore suo profequend', tune fuum, per bonos Sum. prædict. A, quod fit coram Justic. nostris apud Westim.in quindena sancte Trinitat',oftens. quare non fecerit : & habeas ibi Sum', & hoc Breve. T. &c. quia I capital. Dominus Feod. ilius nobis inde remisit Cur. fuam. And so this clause shall be put in the Writ after the Tefte, &c. And if this clause be omitted, and the Lord after the purchase of the Writ send his Letter to the King that he is contented therewith, it is sufficient.

And if such clause, quia Dominus remisit Cur. suam, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his asient, or not. And the form of the Letter of Licence, which shall be cer-

tified unto the King is thus:

A Excellentissimo Principi Domino H.Dei gratià Regi Angl', Domino Hibern', & Duci Aquitaniæ, Dunelm. Episcopus salutem in eo per quem Reges regnant, & Principes dominantur. Quia K de Sin Curia vestra, coram Justiciar. vestris de Banco, per Breve vestrum de Resto, W de uno mesuagio cum pertin.in I, quod de nobistenetur, nostra licentia mediante proponit implacit'; vestræ Celstudini Regiæ tenor. præs. intimamus, nos nostram cur. vobis inde hac vice remissse, salvo nobis alida sure dominii nostri in casu consimili, si acciderit. In cujus rei testimon' has literas nostras sieri secimus Patentes. Dat' apud London', die anno, & c.

But if the Tenant of any Lord sue such a Writ of Right in the King's Court without such Letter, and recover, is

feemeth the recovery is good, and the Lord shall not void the C same nor the Tenant. Also it seemeth to stand with reason, that if a man hold of any Lord, as of Seignory in gross, which is not any Mannor, for which Seignory he cannot keep any Court; that then the Tenant ought to sue such Writ as before in the King's Court, and that the Lord shall not have action or other means to annull this act, because he hath not any Court to hold Plea for that there. In the end of the Writ may be these words, quia Dominus remissit Curiam, Soc.

[3.]

But if the Tenant will fue forth the Writ of Practipe in Capite in the King's Court for fuch Landsasare holden of another Lord, then the Lord shall have a Writ out of the Chancery directed unto the Justices of the Common Pleas, commanding them, that if ir doth not appear unto them that the Lands are holden of the Ring, but of another, they shall proceed no farther in that Plea. For by this Writ the Plea suppose the Eands to be holden of the King, and therefore he and his Heirs shall be concluded against the King for the Tenure, and the same shall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not suppose any Tenure in the Writ, and therefore there diversity is great, Tamen quere.

And if a man sue a Writ of Right directed unto the Lord. E of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right shall have a Writ directed unto the Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do right unto him, he may sue forth a Writ commanding him to do Right, and thereupon he may have an Alias, and a Pluvies, and Attachment; and the form

of the Writ of Attachment is such:

Rex Vic', &c. Si A fecerit, &c. tunc pone, &c. B. quod fit, &c. ad respondend tam nobis quam præsato A, quare cum eidem B per Breve nostrum de Resto præcipimus, quod sine dilatione plenum restlum teneret præs. A de uno mesuag. cum pertin' in N, quod T ei desorceat; idem B, Mandat' nostrum in hac parte parvi pendens, Breve nostrum prædist. In savorem prædist. T malitiose suppressit. Or thus: prædist Breve nostrum recipere, & curiam suam tenere, & eidem A in præmiss. justitiam sacere recusavit, in nostri & Mandati nostri prædist. contempt', & ipsius A grave damnum, ac exheredationis periculum manifesum: & habeas, &c. And upon that if the Desendant appear he shall be put to answer, &c.

But if the Lord of the Court hold his Court, but the F Lord, or the Bailies, or Officer will not do him right, or delay him to have right or to make Process, &c. then the Demandant may flew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award such a Precept or Writ which is called a Tolt, directed to his Bailies, by his Precept to remove the Plea before him into his County; and upon that the Sheriff ought to award such a Precept to his Baily, &c. and to go unto the Lord's Court, and there remove the matter before the Sheriff in his County. And

the form of the Precept is such:

Robertus

Robertus A, Vicecomes Norf. Edmundo C, Ballivo Domini Regis Ducat. sui Lancastr. de F, salutem. Quia ex querela Joh. B ad Com. meum, scilicet, die Lunæ proxim, &c. anno regni, &c. apud Norwic. en le Shire=house tentum , personaliter accedentis accepi, quod, licet ipse Breve Domini Regis de Recto patens, Ball.dieli Domini Regis Ducat. sui Lancast. de F, in dicto Com. meo, direct', de co, Quod ipsi plenum rectum tenerent dicto Joh. B, de mann. de F cum pertin', quod Joh. S deforceat, detuliffet J.P & J.C, Ball. dicti Domini Regis Ducat. prædict. de F prædict'; tamen pro eo quod dicti Ballivi favent dicto J.S in ea parte, & plenum rectum fecundum exigentiam ejusdem Brevis bucusque distuler. facer'; tibi ex parte Domini Regis pracipio, firmiter injungens, quod in propria persona tua accedas ad Curiam Domini Regis Ducat. sui prædict. de F, & Loquelam que est ibidem int. præf. Joh. B & Joh. S per dictum Breve in Com. meo proxim. tenend. tollas, & summoneas per bonos Sum. prædict. Johannem S, quod sit ad Com. meum Norf. die Lune proxim' futur. apud N en le Shire-house tenend', prefato Johanni B inde responsurus : & habeas ibi Loquelam prædict', Sum', & bos Præcept', Dat. in Com. meo apud N en le Shire=houfe, die Lunæ proximo, oc. anno supradicto.

And by this it appeareth, that the Demandant may remove the matter out of the Lord's Court into the County Court: and it feems reasonable that the Tenant may also remove the matter by a Tolt made by the Sheriff, supposing that the Bailies of the Court do savour the Demandant in the matter, Tamen Quere, for the Rule in the Register is, That the Tenant may remove the Plea out of the Lord's Court for good cause before the Justices in the Common Pleas; but the Demandant cannot so do, because he may have a Tolt from the Sheriff, to remove it out of the Lord's

Court into the County Court.

And when it is in the County, he may remove it by a Recordare before the Justices in the Common Pleas. And by this Rule it seems, that the Tenant cannot remove the Plea by a Tolt out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a Recordare, &c. and that for good cause shewed in the Writ. And the Writ of Recordare is such: Rex Vic, &c. salut. Pracipimus tibi, quod assumptis tecum quatuor. discret. & legal Militibus de Comitat. tuo, in propria personatua accedas ad cur. A de B, & in plena Cur. illa recordari fac. Loquelam que est in eadem Curia per Breve nostrum de Recto, inter W Petentem & Stenentem, de uno mesuag, cum pertin. in B, & Record. illud habeas coram Justiciar. nostris apud Westm. in xv. sanéti Mich. sub

[4.7

figillo tuo. & figill. quatuor legalium hominum ejufdem Cur. qui Record. illi interfuerunt, & partibus eundem diem præfigas; quod tunc fint ibi, in Loquela illa prout justum fuerit processur's & habeas ibi nomina prædict. quatuor hominum, & hec Breve. Telle, &c. And in the end of the Writ of Recordare, the cause of the removal shall be put in thus: Quia mesuag.pradiet. T, Ballivo Cur. prædiet', qui tenet Placita ejusdem Cur', tanquam Confanguineo & proximo Hæredi prædict. W, descendere deberet poft mortem ejufdem T, fi idem W fine hæred. de fe obiiffet, & idem W illud versus præfat. Tin Cur. prædict.difrationaffet, propter quod idem Ballivus favet ipfi W in Loquela prædicta, ut dicitur; fiat Executio iftins Brevis, fi canfa fit vera, & prædict.S hoe petat, & aliter non.

And there are many other Causes put in the Register of B

12 H.4.13, & 17. 1 H.7. 30. 1 & 2 P. & Ma. Dier III.

remover of this Plea into the Common Pleas at the Suit of v. 3 H.4. 14. the Tenant. As if the Lord take upon him for to maintain the matter, to have part of the Land. Or if the Tenant alledges Bastardy, or plead a Forein Plea, or joyn the Mise upon the Grand Affife,&c. And when the Demandant hath removed the Plea by Tolt into the County, then the Demandant may remove the fame into the Common Pleas by a Pone, without expressing any Cause in the Pone. But the Tenant cannot remove it, without a Cause be expressed in the Pone.

And it is a Rule, That a Recordare is not given to remove C any Plea in a Writ of Right, but for the Tenant. But Pone is given for the Demandant, but that ought to be out of the County Court. And the form of the Pone for the Deman-

dant is fuch:

Rex Vic', &c. Salutem. Pone, ad petitionem Petent', coram Justiciariis nostris apud Westm.in Octabis (anct. Trin. proxim. futur', Loquelam que est in Cons. tuo per Breve noft. de Recto inter A Petent, & T Tenent', de uno mefuag. cum pertin. in T, & Summ. per bonos Summ. pr.ed. T, quod tunc sit ibi, præf. A inde responsur': . O habeas ibi Sum', O hoc Breve.

And here is not faid [and another writ, ] because the O-D riginal Writ of Right Patent doth remain with the Deman dant, and not with the Sheriff, &c. as do other original

Writs.

And if the Tenant will remove the Plea out of the County by Pone, he ought to flew fome cause in the Writ; and the Writ is fuch : Rex Vic', &c. Pone coram Juftic. nostris apud Westen , in xv. fancte Trin. proxim. futur', Loquelam que est in com. two, oc. ut supra; & dic. pref. A, quod tune sit tibi, Loquelam suam versus prad. T inde prosecut', si voluerit:

# Writ of Right Patent.

voluerit: & habeas ibi hoc Breve. Ieste, &c. Quia pred. A duxit in uxor. W Consanguineam Vie, &c. propter quod idem

Vic. favet, &c. fiat Executio, &c. ut fupra.

And in a Writ of Right in a Court Baron, if a forein Plea be pleaded, or the Miles joyned to be tried by the Grand Assie, now if the Bailies will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailies to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriss, forbidding him to hold Plea in the County Court pon the Writ of Right after such Pleas Pleaded; and if they do proceed, he may such forth an Alias, and a Pluries, and an Attachment against them.

And it is to know, that if the Lord or Bailies do cease to proceed in the Plea by reason of such Writ of Prohibition, then when the Justices in Eire come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is alwaies enrolled in the Chancery; and thereupon he shall have a Writ directed unto the Sheriff, to summon four Knights to chuse the Grand Assie upon the Writ of Right, which is in the Lord's Court or in the County. And the Writ of chusing

the Grand Affise shall be such :

Rex Vic' . C. falut' . Summ. per bonos Summ. iiij.legales Milites de Com. tuo, quod fint coram Justic. nostris ad primam All. cum in partes illas venerint, ad eligend. Super sacram. suum xij. de legal. Militibus de vifn. de N, qui melius sciant & velint dicere veritat', ad faciend. Recogn. magnæ Affif. nostræ, inter A Petent. & B Tenent', de uno mesuag. cum pertin. in N, unde idem B, qui Tenens eft, posuit se in magnam Assisnostram. & petiit Recognitionem fieri, ater eorum majus jus habeat in mejuag. predict: & fumm. per bonos Summ. predict.B, quod tunc sit ibi , auditurus illam election': & habeas ibi nomina pradict. Militum, & boc Breve. And when the Plea is in the Common Picas, then this Writ of Magna Assisa eligenda shall iffue out of the Common Pleas, and is Judicial: But in the case before, it shall issue out of the Chancery, without paying a Fine. And if the Demandant fue a Writ of Pracipe in Capite in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden may fue forth a Writ directed unto the Justices of the Common Pleas, rehearing how that the Land is holden of him, commanding them to proceed no farther,&c. And.

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And, as before is faid, none can fue or maintain fuch C Writ of Right Patent, but they who have an Estate in Fee. fimple, as Tenantin Fee-fimple, or Abbot, or Prior, or Bishop, or Master of an Hospital; and a Body politick, as Major and Commonalty, or Bailies and Commonalty, &c. and fuch Bodies politick may have fuch Writs for their possessions. But Parsons, Vicars, or Chauntery Priests or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this Writ of Right Patent, but another Writ which is called Juris utrum; the nature of which Writ shall be after expressed.

If a man bring a Writ of Right Patent as Heir unto his D Auncestor, he ought to lay the Seisin and Esplees as in pernancy of the Profits of the Lands in his Auncestors. And if an Abbot, Bishop, or such Body politick, bring such Writ, he ought to lay the Seisin of the Esplees as in pernancy of the Profits in themselves, or in their Predeces-And for the refidue of this matter touching the Writ of Right Patent, and the Count, and the Barrs, and all the Circumstances thereof, see the title of Droit in the

Abridgments.

And note, that a Writ of Right, which is called Pracipe E in Capite, is no Writ of Right Patent, but is a Writ of Right Close, and shall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is feifed in Feefimple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Mannor, but meerly of the King as of his Crown, who is 31 H.8. Dier a Lord in gross, (because it is holden of him who is alwaies F

King) is deforced, &c. And this Writ is as high in its nature as the Writ of Right Patent; and no person can sue this Writ, if he hath not an Estate in Fee-simple of his own possession and seisin, or of the seisin of his Auncestor

or Predeceffor.

And it lieth also where Tenant in Fee-simple of any G Lands or Tenements, who holdeth fuch Lands or Tenements of the King in Chief as of his Crown, and not of the King as of any Honour, Caftle or Mannor, loseth his Lands or Tenements by default in a Pracipe quod reddat: Now he or his Heir may have this Writ of Right, of Pracipe in Capite, against the Tenant of the Freehold of those Lands or Tenements. And this Writ shall be Close, and shall be H directed unto the Sheriff, and returnable in the Common Pleas before the Justices there: and in this Writ he ought to lay the Seifin in himself, or in his Auncestor or Predeceffor,

44,45.

Predecessor, in the same form as he shall do in a Writ of Right.

I Rex Vic. Not', &c. Præc. A, quod justè, &c. redd. B unum mesuag. cum pertin. in D, quod clam. esse jus & hæreditat. suam, & tenere de nobis in capite, & unde queritur quod prædict. A ei injustè desorc', &c. Et nissec, & prædict. B sec. te securde clam. sua prosequend', tunc summper bonos Sumprædict. A quòd, &c. Or thus, if an Abbot or other Spiritual persons sue the Writ; Quod clam. esse jus Ecclesia sua Santa. Mariæ de N, & tenere de nobis in capite, & unde queritur, &c.

And by this Writ it fully appears, that Lands which are holden of the King as of an Honor, Caftle or Mannor, are v.21 E.3.B. not holden in Capite of the King, because that the Writ of Tenure, 16. Right in such case shall be directed unto the Baily of the there are Honor, or Castle, or Mannor, to do Right, &c. But when some Honors the Lands are holden of the King as of his Crown, they of which are not holden of any Mannor, Castle, or Honor, but meerly Lands are of the King as King, and of the King's Crown as of a holden in Seignory by it self in gros, and in Chief above all other Capite. Seignories. And thereof it followeth, that there are many Errors and erroneous Opinions at this day in the sueing of Liveries, and sinding of Offices, and determining which Lands shall be taken to be holden of the King in Chief, and which not; and therefore Quere to know the truth.

In Practice in Capite the Tenant shall not plead that the 38 E.3. 13.

Tenements are not holden of the King, although the Writ Br. Droinds doth so suppose; but he ought to take the same by prote-reste, 9. station, and plead other matter in Barr, if he have any mat-

ter to plead.

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M And in a Writ of Right he ought to count of his own Seifin, or of the Seifin of his Auncestor: and if he count of the Seifin of his Auncestor, he may alledge the Seifin in the time of King Richard the first, but the Seifin is not traversable: But the Tenant may tender a demy mark to inquire of this Seifin, &c. and if it be found with the Tenant, that the Auncestor was not seifed, the Demandant shall be barred. But if the King be party Demandant, the Tenant cannot tender the demy mark to enquire of the Seifin, but ought to plead in Barr; and there the Tenant shall have no Imparlance without the affent of the King's Serjeants. And it seems reasonable, If the Tenant in a Freeipe quod reddat lose by Astion tried, that yet he shall have a Writ of Right.

And so if the Demandant be barred in an Assise of Mortdauncester brought by him, or other Real Action, as a Writ

Writ of Entry sur Dissertion, & c. or such Writ, and is barred by Action tried, yet he shall have a Writ of Right Patent, of Practipe in Capite, if the Lands be holden of the King in c. part 86. chief: and so it seemeth, If a man lose by Default in a

C.5. part 86. If the Tenant after the Mife joyned maketh Default, final Judgment upon that

of Precipe in Capite, it the Lands be holden of the King in so, chief: and so it seemeth, If a man lose by Default in a Writ of Right before the Mise joyned, yet he shall have a Writ of Right against him who recovereth. But after a Mise joyned it is otherwise, so then upon Default after issue joyned, the Judgment shall be final, as well against the Demandant by his Nonsuit, as against the Tenant if he make Default after.

Default mall not be given, but a Tein Case shall issue; for peradventure he may fave his Default: but Judgment final, where it ought not to be in a Writ of Right,

shall bind until it be reversed.

And a man shall have a Writ of Right Patent of a Rent A as well as of Land.

## Writ of Right in London.

Tenements within the City, &c. by him who claims an Estate in Fee-simple in the Lands and Tenements, and not by him who claims an Estate for life, or in tail, or in Dower, or by the Courtesse. For if Tenant in Fee-simple loseth his Lands in London by Default, or by Verdick, it seemeth that he shall have a Writ of Right of those Lands directed unto the Maior and Sheriss, and it shall be in the nature as a Writ of Right Patent. And the form of the Writ is such:

Rex Majori & Vicecom. Lond. salut. Pracipim. vobis, c quod sine dilatione plenum rectum teneatis E de N, de uno mesuag. & duobus shoppis cum pertin. in Lond, que clamat. tenere de nobis per liberum Servic, &c. que. W ei desorceat, nè ampliùs inde clamorem audiamus pro desettu recti. Teste, &c. And it shall not besaid in this Writ, Et niss feceris, Vicecomes talis Com. saciet, &c. because the Writis as well unto the Sherist of the said City as unto the Major.

And the Writ of Right Patent which shall be directed unto another City or Borough shall be of like form as the Writasoresaid is, as appeareth by the Register, thus:

Rex Majori & Ballivis suis Oxon. salut. Præcipimus vobis, quod sine dilatione plenum rectum, & c. E. de C, de viginti solid. redditus, & pastur. ad sexdecim boves cum pertin. in N, que A de B ei desorceat, & c.

And

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And because that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the Writ of Right Patent be directed unto the said Maior and Sheriffs, or Bailies, as Bailies and Officers of the King, as if Lands were holden of the King as of any Honor, or Castle, or Mannor.

And also upon a Writ of Right sued in London the Plea shall not be removed by Tolt, or Pone, or Recordare, as another Writ of Right fued in the Court of another Lord shall be. But if the Tenant in the Writ of Right in London youch a Foreiner to Warranty, the Demandant shall come into the Chancery, and shall sue a Summ. ad warrantigandum in the Common Pleas before the Justices at a certain day, and another Writ unto the Maior and Sheriffs, to fend the Record before the faid Justices at the same day, &c. and then the Major and Sheriffs do adjourn the parties before the Justices of the Common Pleas at a certain day, and also at the same day shall send the Record which is before them before the faid Justices; and when the Juflices have determined the Warranty, they shall send back the Record by Writ which shall iffue out of the Rolls of the Justices, directed unto the Major and Sheriffs, commanding them to proceed in the Plea within the faid City. And the same is by the Stat. of Gloucester de Forins. vocat. ad Warrantum, cap. 12. And so shall it be done if the Tenant plead a Forein Plea, the Plea shall be removed as aforesaid; and when the matter of the Plea is determined, then shall it be fent back unto the Major and Sheriffs as aforefaid, by the equity of the faid Statute.

And by the rule in the Register, every Pracipe quod reddat of Plea of Lands or Tenements in London shall be directed unto the Maior and Sheriffs joyntly: But every other Writ shall be directed unto the Sheriffs only.

And now it is a common opinion, That if a man hath Title to have a Formedon of Lands or Tenements in London, or any other Action Real, as a Writ of Entry far Disciplin, or other Writ what oever of Lands or Tenements, he ought to sue this Writ of Right Patent directed unto the Maior and Sheriffs of London, that they shall do right, &c. and that the Demandant upon this Writ shall make his Protestation to sue it in the nature of what Writhe will, as a man shall do upon a Writ of Droit close sued in Ancient demesse. But it seemeth the Law shall not be so; for this Writ is a Writ of Right Patent, which is directed unto the Maior and Sheriffs, as other Writs directed unto another

City or Borough are. And I have not heard that a man fhall make protestation to sue such Writ Patent in the nature of what Writ he will. But the City of London by their Custome have power to hold Pleas of Lands within the City by other the Kings Writs as well as by Writ of Right Patent, and that appeareth by the Register.

7 H.6. 32. ac.37 H.6. 27. But Plow. 124. Exanford, contrary.

[7.]

And it appeareth, that London is not Ancient demesne, G for then the Writ of Right which shall be directed unto the Maior and Sherists should be Close, and not Patent. And it appeareth by the Register, in the title of Juris utrum, that a Juris utrum was sued of Tenements in London returnable before the Justices of the Common Pleas.

And also it appeareth in the Register, in the Title of Writs of Waste, in the end of the Title, that a Writ of Partic. facienda was directed unto the Maior and Sherists of London, to make Partition of Tenements in London; and also there followeth a Writ of Estrepment, such and directed unto the Sherist of London, upon a Writ of Juris utrust depending before the Justices of the Common Pleas of Telegraphy.

nements in London.

And it appeareth in the Register, a Writ of Justices of A Dower sued in London for Lands in London was directed unto the Maior and Sherists of the City, and a special Writ for the Heir in tail for Lands in London directed unto the Maior and Sherists there, upon a Devise made of the Lands unto his Ancestor in tail, &c. And the like Writ for him in the Remainder in tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some persons to others, &c. And these Writs are in the Register after the Writ of Formedon in the Remainder, Fol. 244.

And by these Writs it appeareth, that a Writ of Right Patent, which is directed unto the Maior and Sheriffs of London, is not such a Writ as a man shall declare thereupon in the nature of what Writ he will, &c. as it shall be upon a Writ of Droit Close sued in Ancient demesse; but that it behoves the sue in London his Writ in the nature of such Writ as his Case requireth, &c. But Quare veritatem of

that which was used in ancient times in London.

And it appeareth in the Register, that the King shall have B a Writ of Escheat retornable into the King's Bench, for Lands in London escheated unto the King; and by the same reason another man shall have a Writ of other nature, there returned in the Common Pleas. But the King hath a prerogative in this matter before others, to sue in what Court

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he wiil; but he cannot alter or change the nature of the Writ, otherwife than the Law giveth the same to him and

others, and therefore Quere of this matter.

There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custome of the City, and that is by Bill without any Writ out of the Chancery; and the fame is called a Bill of Fresh force, or an Affife of Fresh force, and lieth only where a man is diffeifed of his Lands or Tenements in any City or Borough, or deforced of any Lands or Tenements after the death of his Aunceftor, or after the death of his Tenant for life, or in tail, or in Dower, or the like; now within xl. daies after the Title accrued unto him, he may fue this Bill of Frelb force, and shall make protestation to sue in the nature of what Writ he will, as Affife de Mortdauncester, or Affife of Novel Diffeisin, or Intrusion, or of Formedon, or in the nature of any other Writ, as his Case doth require: But after the xl. daies past after the Title accrued unto him, he ought to fue a Writ out of the Chancery, directed to the Maior and Sheriffs of London, as the case lieth.

And also it appeareth by the ancient Treatise of Natura Brevium, that if a Foreiner sue an Assis, or other Precipe quod reddat of Lands in London in the Common Pleas, &c. that the Maior and Sherists, &c. may demand Conusance, &c. And therefore it seemeth, if they do not demand Conusance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in London. And when the Maiors and Bailies shall demand Conusance of Pleas, and when not, and when they have surceased their times, appeareth in the Title Conusance, in the Abridgments,

more at large; and therefore see there.

## Writ of Right of Domer.

The Writ of Right of Dower is Patent, and shall be directed unto the Heir, to sue in the Court of the Heir, as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wise demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a Tolt into the County, and also may remove the same out of the County into the Common Pleas by a Pone, &c. without shewing of any cause in the Writ, as the Demandant shall do in a Writ of Right

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Patent. But the Tenant in a Writ of Right Patent shall not remove the Plea out of the County into the Common Pleas, without shewing of cause in the Ponte. And the Tenant in a Writ of Right Patent, or in a Writ of Right of Dower, may remove the Plea into the Common Pleas by a Recordare out of the Court of the Lord, upon cause shewed in the Writ. And what causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a Ponte, because he ought first to remove it by a Tolt into the County, and from the County he may remove it into the County on a sponte, without shewing of cause in the Writ, as before is said.

And in a Writ of Right Patent the Plea may be removed at the Tenants suit by a Recordare, out of the Lord's Court, into the Common Pleas, before the Justices there: and by the same reason it seemeth that it may be removed at the fair of the Tenant, in a Writ of Right of Dower, out of the Heir's Court into the Common Pleas, before the Justices

there, by a Recordare for good cause. But Quare.

And if the Husband do enfeoff a stranger of all his F Lands, and dieth, and his Heir hath nothing by descent; now if the Feme be to sue forth a Writ of Right of Dower, it seemeth that she shall sue her Writ of Right of Dower directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold this Dower of him by Fealty. But before the Statute de Quia Emptores terrarum, If the Husband enseoff a stranger of parcel of his Lands, &c. to hold of him, then if the Feme be to sue a Writ of Right of Dower against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seignory that remaineth in him.

And so if the Husband at this day giveth parcel of his A Mannor in tail to hold of him, and dieth, the Feme shall sue her Writ of Right of Dower in the Court of the Heir of her Husband against the Donce in tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in tail of all the Land that he hath, and dieth, and the Feme is to sue a Writ of Right of Dower of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seignory in gross; and therefore it stands with reason that she should have her Writ of Right of Dower against the Donce in tail directed unto the Sheriss, retornable in

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**[8.7** 

the Common Pleas, and she shall have this Clause in the Writ: Quia E, capitalis Dominus Feodi illius, nobis inde re-

misit Curiam suam.

And so if the Husband make a Lease of all his Lands unto a stranger for life, and dieth, and the Feme is to bring a Writ of Right of Dower against the Lesee for life; then it seemeth reasonable that the Feme have her Writ of Right of Dower against the Lessee for life in the Common Pleas, because that he in the Reversion hath not any Court. And although that this Clause, viz. Quia B, capitalis Dominus, &c. be put in the Writ, if the Lord have not any Court to hold, because it is a Seignlory in gross, and not any Demesn Land to hold a Court,&c. then, although the Lord did never remit his Court, and that there is not any matter apparent or remaining in the Chancery, to prove the Lord's will and affent to remit his Court, yet the Writ returned into the Common Pleas, before the Justices there, is good; and they shall proceed thereupon, if the Lord hath not any Court to hold Plea for this matter. And it seemeth that the Lord shall not have his Action against the Demandant for suing the Writ in the Common Pleas, if he hath no Court to hold Plea thereupon, and to do right unto the party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. Quare of this matter.

And this Writ of Right of Dower lieth where a Feme is endowed of parcel of her Dower, and she would demand the residue against the same Tenant, and in the same Town, then she ought to sue this Writ of Right of Dower; for the words of the other Writ will not serve, viz. and entitl habet, because that she hath received part of her Dower; and therefore of necessity it behoveth her to sue this Writ of Right of Dower, to recover the residue: and the Writ shall be directed unto the Heir, or unto his Gardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

And if a Feme lose her Land which she holdeth in Dower by Default in a Pracipe quod reddat; yet, according to the opinion of some men, she shall have a Writ of Right of Dower. But it seemeth, by the Equity of the Statute of west. 2.cap.4.that if a Feme lose by default the Land whereof she hath had Dower, that by that Statute she shall have a Quad si despresat to recover the Land; and before that Statute she had no remedy for to recover the Land, but only an Action of Disects, if she were not summoned in this Writ of Right of Dower.

And if a Feme hath Dower, and lose the same by Affile E or Action tried, it seemeth she hath not any remedy but only by Attaint; for it seemeth that she shall not have remedy to recover by a Writ of Right of Dower, because she had the Land once affigned unto her in Dower, and she was in possession of the same, so that the Title was executed, and so the ought to sue an Action of her own Possession, if she be afterwards deforced. Tamen Quare. And after the F Plea removed unto the Common Pleas, the Process is then Grand Cape & Perit Cape. And in the Heir's Court the manner is to make a Precept in the nature of Summons, and of Grand Cape and Petit Cape, and the Writ directed unto the Heir is such:

Ker A salutem. Pracipim. tibi, quod sine dilatione plenum G reclum teneas B, qua suit uxor C, de tertia parte decem acr. terr. cum pertinen. in W, quam clamat tenere de te in dote, per liberum Servic. tertia partis unius denarii per annum pro omni

Servic', quam C ei deforceat, oc.

And also a Fememay have a Writ of Right of Dower of H the moiety, according to the usage of Gavellind, where she hath received part, and is deforced of part. And also it appeareth by the Register, that the Feme shall have a Writ of Right of Dower directed unto the Heir himself, where he himself deforceth her of the profits of an Office: and the Writ is such:

Rex A salutem. Pracipimus tibi, quod plenum restum K teneas A, & R uxor. ejus, de tertia parte exituum provenient. de custodia Gaola Abbatia Westm', & de tertia parte trium ro sarum terra, unius roda prati, & redditus tot panum, & tot lagenarum cervis', vel tot ferculorum per diem, vel per septimanam, vel per annum, cum pertinen. in Vill. Westm', quas clamat. prinere ad liber. Tenementum suum, quod de tenet in Dote ipsus R in ead. in Vill', & tenere de te per liber. Servic', inveniendatibit vertium pretem custod. pro Custodia Gaol. pradist', & porta ejustem Abbatie, pro omni servic', qu. tu ipse eis desorc', & c.

And by this Writ it appeareth, that a Feme shall have a A Writ of Right of Dower of that thing which is appendant or apportenant unto the Land which she holdeth in Dower, &c. if she be deforced thereof.

## Writ of Right de rationabili parte.

A Writ of Right de rationabili parte alwaies lieth betwixt B Privies in bloud, as betwixt Brothers in Gavelkind, or betwixt Sifters and other Coparceners, as Nephews and Neeces,

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Neeces, and lieth for Lands in Fee-fimple: As if the Aunceftor leafe his Lands for term of life, and dieth, and hath issue two Daughters, and afterwards the Tenant for life dieth, and one Daughter entereth into the whole Land, and deforceth her Sifter of the Land; her Sifter shall have this Writ of Right de rationabili parte: and so if the Auncestor were diffeifed of Lands, and dieth, and one Sifter entereth into the Lands, and deforceth her Sifter thereof; the Sifter who is deforced shall have this Writ against her other Sister. And so two or three may sue this Writ against the fourth Sifter, or the Aunt and the Neece may fue this Writagainst C that Sifter which deforceth her of her part, &c. Writ lieth as well upon a dying fened of the Auncestor, if D one Sifter enter upon all, and deforce the other Sifters, as E where the Auncestor doth not die seised: and the Writ is a F Writ of Right Patent, and shall be directed unto the Lord of whom the Lands are holden, as other Writs of Right G Patent shall be, and shall be removed by Tolt and other Writs, as the Common Writ of Right shall be. But Grand Affife, nor Battail shall be joyned in this Writ, for the privity of the bloud that is betwixt them N ither shall this Writ be fued against a stranger, and if it be, it shall a vate. And if the Auncestor die seised, and one Sister contreth into all the Land, and deforceth her Sifters, the others may we this Writ of Right de rationabili parte, or a Writ of Naper obiit, at their election. And so it is for Lands in Gavelkind; if one Brother entreth into all the Lands, and deforceth his Brethren, they may fue this Writ of Right le rationa it parte, or a Nuper obiit, if the Auncestor die seised : but if the Auncestor doth not die seised, then they ought to sue this Writ De Relto de rationabili parte. But againft a Stranger, it behoveth to fue Affife de Mortdauncester, upon the death of their Auncestor, or other Writ ( as their Case shall require) of the Seifin of their Auncestor. And the form of the Writ of Right derationabili parte is fuch:

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Rex A B salutem. Præcipim tibi, quod sine delatione plenum rectum teneæs W de F, de decem acris terræ cum pertin in F, quas clamat esse rationabilem partem suam, quæ eam contingit de libero tenemento quod suit I, patris, vel matris, avunculi, vel amitæ, vel consanguines sui, in ead. villa, & tenere de te per liberum Servic tertiæ partis, vel quart partis unius denarii per

annum pro omni Servitio, ques B m Sei detorceant.

And by the Register, in this Writ aman may see what Rent and Services all the Land which is partable betwint the Sisters shall yield and pay unto the chief Lord, and accord-

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ingly put every one of the Heirs to her part. So if there be one Demandant, and two Deforceants, then thus: Qued clamat tenere de te per liberum Senvitium tertiæ partis tanti per annum. And if there be two Demandants, and two Deforceants, then thus: Quod clamat tenere de te per liberum Servic. medietatis, Or, duarum partium tanti per ann. pro omni Servitio. And if all the Land be holden by 4 d. per annum and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be: Quod clamat tenere de te per liberum Servic. duorum denar. per ann. pro omni Servic'. &c.

And if there be two Sifters, and after the death of the I Auncestor they enter, and occupy in common as Coparceners, and one of them deforce the other Sifter to occupy that which is appendant or appurtenant to the Tenement which they have in Coparcenary; then she who is deforced shall have a Writ of Right de rationabili parte, against her Sifter, of that which is so appendant or appurtenant, and the Writ for that shall be such : Quod clamat pertinere ad liberum Tenementum suum quod dete tenet in eadem villa, & tenere debet de te per liber. Servic. tanti pro omni Servic. quod W, &c. And in this Writ he shall make his demand of a K certain portion of Land, as to so much as his Plea doth amount unto, to hold in feveralty: as if the Auncestor die feised of twenty acres, and hath two Daughters, and one entreth into the whole, and deforceth her Sifter; the other Sifter shall demand by her Writ ten acres of the twenty acres, because that such is her part; and by this Writ if she L recover, the shall have Judgment to recover ten acres, to hold infeveralty, as her part doth amount unto.

And this Writ of Right de rationabili parte ought to be M brought against all the Coparceners that hold the Land, &c. and by all those that are despreed of the Land, as it appeareth by Britton: and Voucher and View do not lie in this N Writ, because of the privity of bloud; but in a rationabili parte the View was granted H. 15.H. 5. because that the Auncestor did not die seised,&c. And Nontenure is no Plea in this Writ by Britton, &c. And the Process in this Writ, after O it is removed into the Common Pleas, is Sum. Grand Cape & Petit Cape; and in the Lord's Court the manner is to make Process in the nature of Grand Cape & Petit Cape, inc.

And the Heir of one Coparcener may fue this Writ of P Right de rationabili parte of the Seifin of the common Aunceftor, which was of the Seifm of his Aunceftor in the time of King R.I. or H.2. or of the Seifin in the time of King John, or other Kings after that time, if he can prove it. As a man fhall

shall have a Writ of Right Patent of the Seifin of his Aun-A ceftors in such times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Auncestor in fee, now if the other Coparcener deforce her of the Lands, fhe may have a Writ of Right Patent against her Sister for the Land, and shall joyn the Mise by Grand Assis, or by Com. 306. Battail, because she doth not there claim the Land as Heir to no Battail liher Auncestor, as it seemeth : Tamen Quare.

And if a man hath inue two Daughters, and dieth feifed them. of Lands in tail, and one Daughter entreth into the whole, and deforceth her Sifter; there the Sifter may have a Formedon against the other Sifter, and not a Naper obiit, nor this Writ of Right de rationabili parte, for this Writ lieth pro-

perly for the Lands in Fee-fimple.

## Writ of Ne injuste vexes.

c W Rit of No injuste vexes lieth in case where Lord and Tenant are, and the Tenant hath holden of the Lord and his Auncestors by Fealty, and 20s, rent yearly, and of late time the Lord hath gotten Seifin of greater and more C.4. part 11. Rent of the Tenant, by payment of the Tenant of his own Bevil's Cafe. agreement without coercion of Distress: Now if the Lord will distrain the Tenant for this surplusage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seifin which the Lord hath had by the payment of the Tenant of this Rent of his own agreement. But the Tenant may fue this Writ of Ne injuste vexes directed unto the Lord; which Writ is in it felf a prohibition unto the Lord, that he do D not distrain his Tenant to do other Services than of right he ought to do And this Writ in its nature is a Writ of Right, and shall be Patent; and this clause, Et nist feceris, Vicecomes, &c. shall be put into the Writ. And the Process in this Writ is, Prohibition, Attachment, and Distress against the Lord, commanding him that he shall not distrain, &c. And E this Writ is founded upon the Statute of Magna Charta cap. 10. which willeth, Qod nall. distring. ad faciend.majus Servic. de Feodo Militis, nec de alio libero Tenemento , quan inde debetur. And the form of the Writ is such :

Rex A falutem. Pracipim is tibi, Ne injuste vexes vel vexari permittas B, de libero Tenemento suo, quod de te tenet in I, nec inde ab eo erigas, vel exigi permittas Confuetud. vel Servitia que inde facere non debet, nec folet : & nift feceris, Vic. Lincoln. idem fieri faciet, ne amplius indeclamorem audiamus pro detella ricii.

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But otherwife in Affi e of Rent, of Refcous, for the Tenure is traversable in thefe Writs. 12 E.4.7. 22 Aff.68. Thorpe.

10 H.7.11. 26 H.8.6. Com.45, & 94.

And this Writ is alwaies Auncestred, viz. where the Te-G nant and his Auncestors have holden of the Lord and his Auncestors by Fealty and 20 shillings Rent, or other Rent and Service; and of later time the Lord hath encroached divers other Services or Rents, by payment of the Tenant, or doing of other Services which he ought not to do unto the Lord; then the Tenant may fue this Writ: for by encroachment of Rent by the Lord by payment of the Teor in a Writ nant, the Tenant shall not avoid the same in an Avowry by the Lord for that Rent which is so encroached. But if the Lord H or Ceffavit; do encroach other Services which the Tenant of right ought not to do unto him, as Homage, or Escuage; then the Tenant may avoid this encroachment in Avowry by the Lord for these Services, because the Tenant may traverse the manner of the Tenure in that Case, as to say, that he holdeth of the Lord by Fealty and 20 s. Rent only, without that that he holdeth by Homage, Fealty and Rent, in manner and form as the Avowry is made: Or the Tenant may fue this Writ of Ne invale vexes in that case if he will. And if the Lord do distrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of right he ought to pay; then the Tenant shall have an Attachment against the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant shall count against him in this manner:

B sheweth unto you, That whereas he holdeth of the aforesaid A,&c. as of his Mannor of C, 20 Acres of Land with the appurtenances in N, by Homage, Fealty, and by the Service of the twentieth part of a Knights Fee, and by the Services to render to the faid A half a pound of Pepper yearly at the Feast of All-Saints, for all manner of Services; yet the aforesaid A, over the Services aforesaid, vexeth the faid B, and fuffereth him to be vexed, and of him demandeth and distraineth, and suffereth him to be distrained for 9 s. per ann. of Rent, for which he is damnified unto his damage of 20 l. And so note, that he shall declare of damages in this Writ; and then upon this Count, the Lord who is Defendant shall make his defence, and shall defend the wrong and force,&c. and fhall count against the Plaintiff, and shall say that he doth not tortiously demand the said Rent of os. over the other Services, &c. for he shall say that the said B holdeth the faid 20 Acres of Land, &c. of him by the faid Rent and Services,&c. and that he the faid A was feifed as well of the faid Rents of 9 s. as of all the other Services aforefaid

aforefaid, by the hands of the aforefaid B, as by the hands of his very Tenant for the faid 20 Acres of Lands with the appurtenances, as of fee and of right in time of peace, viz. in the time of King Edward late King of England, &c. in [11.] taking of the Efplees, viz. Rents, &c. And that fuch is his right, he is ready to make good by his body, &c.

And thereupon he who is Plaintiff in the Ne injuste veres shall defend this Count, and thereof shall put himself upon the Grand Affife, and so the Mise shall be joyned betwixt them in this Writ, which is at the first but a Prohibition,&c. And Judgment final shall be given upon this Writ after the Mife joyned, if it pass against any of the Parties; or if any of them be Noniuit, or make Default after the Mile joyned. B And see the form of the Count, and of the Defence in this Writ, in the Book of Entries of Pleas, fo. 90. on the first page.

And it appeareth M. 18. E. 2. that the Feoffee shall not 14 H.4,5. ac avoid Seifin of Fenthad by encroachment of his Feoffor, by Thirning nor shall he have a Writ of Ne in ufte veres; nor a man shall and after not have a Writ of Ne injuste vexes against the Grantee of 163. the Scigniory, as appeareth P.10. E.3.

And Trin. 20. E. 3. it appeareth, that Tenant in tail shall not have Ne injuste vexes. &c. but he shall plead and shew the matter, and shall not be estopped by the payment and Seisin had by the hands of his Auncestors; but by a Seifin had by his own hands he shall be bound during his time in Avowry, as it feemeth. But after the Mife joyned in a Writ of Ne injuste vexes sued, if the parties imparle until another term and day, and after at this term at the day the Lord who is the Defendant in the Ne injuste vexes make Default, now what Process shall be awarded thereupon, or if Judg. ment shall be given upon this Default without any Process, Quere. And so if the Plaintiff at another term after the Mise joyned and day given,&c. make Default, it seemeth he shall be Nonsuit,&c.

#### Writ De Recto clauso.

F WRit of Droit close is a Writ which is directed unto the Lord of Ancient demesne, and lieth for those Tenants within Ancient demesn who held their Lands and Tenements by Charter in Fee-fimple, or in Fee-tail, or for Life, or in Dower; if any of them be outled of his Lands or Tenements, or Diffeifed, &c.he or his Heir may fue this Writ of Droit close directed unto the Lord of Ancient demesn, commanding him to do right, &c. in his Court; and the form of the Writ is fuch: Henracus Henricus Dei gratiâ, &c. Ballivis suis de I salut. Præcipimus G vobis, quod sine dilatione, & secundum Consustud. Manerii nostri de I, plenum restum teneatis A de uno mesuagio cum pertin. in I, quod B ei desorc, nè amplius indè clamorem audiamus pro de-

feetu recti. Tefte, &c. And another Writ thus:

Rex Ballivis suis Castri de Bamburg. salur. Pracipimus, &c. quod, &c. secundum Consuctud. Manerii Castri de Bamburg. plenum rectum teneatis de duabus partibus piscariae aquae de I in Bamburg. quas Bei desorc, &c. And the order of putting H the parcels of Houses, Lands, Meadows and Passure, &c. shall be observed and used as shall be done in a Writ of Right Patent. And this Writ may be sued of Common of Passure, I and for stopping of a Way, and such like. And the Writ for the Common is such:

Rex, &c. Præcipimus tibi, quod plenum retium teneas, &c. de K Comm. pasturæ in T, que pertinet ad unum mesuag, & x. acr. terræ, que secund. Consutud. Manerii præd. tenet in eadem villa, quas B, C & D ei deforc. And for stoppings of a VVay the

VVrit is fuch :

Rex Ball. Episcopi Covent. Litch. de Maner. de C, salutem. L Questus est nobis R, quòd W injustè & sine judicio obstruxit quandam Viam in D, que est infra præcinctum ejusdem Maner. ad nocumentum unius mesuagii, quod idem R secund. Consuetud. Maner. præd. ten. in eadem Vill': & ideo vobis præcipimus, quòd vocatis coram vobis partibus prædict, auditisque hine indè rationibus, eidem R in præmis. debitum & sessionum justitue complementum sieri saciatis, prout secundum Consuetudinem Ma-

nerii prædict. fuerit faciend, 5 c.

And note, that the demess Lands of a Mannor, and the M Mannor it self which is called Ancient demess, is pleadable at the Common Law; and a man ought to sue his Action for the Mannor, and for the Lands which are parcel of the Mannor, at the Common Law, and in the Common Pleas. But if a man will sue for the Lands which are holden of the Mannor, which are in the hands of a free Tenant who holdeth of the Mannor, for these Lands he ought to sue this VVrit of Droit elose directed unto the Lord of the Mannor, and there he shall make his protestation to sue in that Court the same VVrit in the nature of what VVrit he will declare. And the form of Entry when such VVrit is brought in Court is such:

Ad hanc Cur. venit R N per Nich. B Attornatum suum, per N Literas Patentes ipsius R, & liberavit præsatis Ballivis quoddam Breve Domini Regis nunc clausum, sistem Ballivis directum, in sorma juris secundum Consuetud. Manerii pr.ed., exequend.,

enjus tenor sequitur in hec verba:

Henricus, &c. Pallivis I de S falutem. Pracipimus vobis audd jufte & fine dilatione, & secundum Consustudinem Maneriide G de S, plenum rectum teneatis Robert N de duobus mesuagiis, &c. in W & H, que P & C ei deforceant,ne amplius inde clamorem audiamus pro defectu recti, &c. Et Super hoc præd. Robertus N invenit Pleg. de prosequendo Breve suum præd', scil. T & W. & protestatur prosequi illud Breve in eadem Cur.in forma & natur. Brevis Affife nove Diffeifine ad Communem Legem, fecundum Confuetud. Manerii præd', dicens quod præd. P & C injufte & fine judicio diffeisiverunt eum de libero Tenem. suo in W & H, viz. de Tenementis præd. cum pertin. post primam, &c. Et pet. inde processim fieri secundum Consuetud.ejusd. Man.præd, erc. Ideo fecundum Confuetud. ejufd. Man. pr.ecept.eft T H, fubballivo Man. illius, & ministro bujus Cur', quod facer. Tenementa illa reseiser. de catallis que in ipso capta fuer, & ead. Tenementa cum pertin. effe in pace ufque ad proxim. Cur', coram præfatis Bullivis & Jestatoribus ejuldem Cur', ziz die Jovis proxim futur. hic, fc. apud S, tenend', or interim faciat xii. liberos & legales homines de visn. de W & H pred. infra præcinctum Manerii prædicti videre Tenementa præd', & nomina eorum imbreviari facere. Et quod fumm. eos per bonos Summ', quod tunc fint bic, scil. apud S, parati inde facere Recognitionem: Et quod ponat per vadios & falvos plegios prædict. PT, Ballivum fuum, fe iple inventus non fuerit, quod tune fit hie apud S,ad audiendum illam recognitionem, &c. Et quod tunc bebeat ibidem nomina Pleg. Summ', & dictum praceptum fibi inde direct. Et idem dies datus eft præf.R N. 5c. hic, 5c.

See all this form to make protestation in the Book of Entries of Pleas. fol. 115. And then at the day of the Precept and Process returned, the Defendant ought to appear and plead in Barr, or unto the Writ, or other matter, in such form as shall be in an Assistant the Common Law. And if the Protestation be made in the nature of another VVrit, then the Precept shall be according unto the nature of the Process which is given in such VVrit; and the Tenant when he cometh in shall plead as he shall do in such VVrit sued against him at the Common Law, for the nature of the Protestation doth alter and change the manner of pleading for

the Tenant.

A And if falfe Judgment be given in this VVrit, the party Tenant or Demandant may fue a VVrit of falfe Judgment

thereupon.

B Eut he who holdeth Land in Ancient demesh by Copy of Court Roll, at the will of the Lord, who is called Tenant by base Tenure, if he be ousled of his Lands or Tenements there

[12.]

Fir.6.ac. H.4.34. 7 E.4.19. there in Ancient demess, he shall not have this VVrit of Droit close, but he ought to sue by Bill in the Court of the Lord of the Mannor, and shall make protestation to sue there in the nature of what VVrit he will. But if salle Judgment be given against him in that Court, he shall not have a Writ of salle Judgment thereupon at the Common Law, nor other remedy, but to sue unto the Lord by way of Petition, as it appeareth in H.14.H 4 For those who hold their Lands in base Tenure in Ancient demess, or by the Rod, hold them in Villenage, and they shall not have such Writ of Droit close, nor a VVrit of salle Judgment, &c. See the Stat. of 1 R.2.224.6 of that matter.

And this term, which is now at this day called Copy-of tenants or Copy-holders, or Tenants by Copy, is but a newfound term, for of ancient times they were called Tenants in Villenage, or of base Tenure; and that appeareth by the ancient Tenares that those who held by the Rod, or in base Tenure, or by Copy of Court Roll, were then called and named Tenants which held in Villenage: for Tenants by Copy of Court Roll are not specified, nor named by such name; but yet at that time there were such Tenants, but then they were called Tenants in Villenage or of base Tenure.

And when the Writ of Droit close cometh unto the Lord, por unto his Bailies, the Lord ought for to hold his Court, and to proceed thereupon according to Law,&c And if the Lord will not hold his Court, then the Demandant may sue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court,&c And if he will not hold it, then the Demandant may sue an Attachment against the Lord directed unto the Sheriff, returnable in the Common Pleas,or Kings Bench, and thereupon the Demandant shall recover his damages.

And if the VVrit of Droit elose be directed unto the Bailies,&c. and they will not hold the Court, then he may sue such a VVrit unto the Bailies, commanding them to hold their Court; and if they will not so do, he may sue an Attachment against them directed unto the Sheriss, retornable as aforesaid.&c.

And if the Lord himself ouste his Tenant of Lands which gare holden of the Mannor by Charter in Fee, the Tenant who is ousted shall have this VVrit of Droit close directed unto the Lord himself, if he will, &c. Or in this case he may have an Ashse, or other VVrit at the Common Law against the Lord for those Lands. But it appeareth by a Rule in the Register, that if the Demandant be deseated of Justice

in the Lord's Court, that then the Demandant may fue a VVrit directed unto the Sheriff, commanding the Sheriff that he go unto the Court in Ancient demein, and that he take with him four discreet Knights in their proper perfons, to fee that right be done unto the party Demandant in this Writ; and if the Sheriff refuse so to do, he may have an Alias, and Plaries, and Attachment against the Sheriff in the Common Pleas or King's Bench. But it feemeth that this VVrit which shall be so fued directed unto the Sheriff, that he fee right done to the Demandant, is of little effect; for by virtue of this VVrit he cannot compel the Lord to do right unto the Demandant, as it seemeth: tamen Q : torifhe cannot cause the Lord to do right unto the Degandant in a Writ of Droit close, then it shall be in vain to we with V Vrit directed to the Sheriff, to go unto the Lord's Court, and to fee that right be there done. And the Demandant may fue fuch Writ directed unto the Bailies, or unto the Lord himself, commanding them that they do him right, &c. and that they do not delay the matter, &c. And thereupon an Alias, a Pluries, and Attachment, if need be.

A And if a Plea be removed in the County, the Demandant may fue such V Vrit directed unto the Sheriff, that he proceed in the Plea, and to Judgment, and to do right; and upon that he shall have an Alias, a Pluries, and Attachment

against the Sheriff, if he will not do accordingly.

And note, that the Demandant in a VVrit of Droit close cannot remove the Plea out of the Lord's Court for no 6 H.4.1. cause, &c. nor the Tenant cannot remove the Plea out of the 50 E.3.24. Ancient demess, if not for causes which prove the Land to 1 H.7.30. be Frank-see, and not Ancient demess. And the form of the VVii of Recorders to remove the Plea out of Ancient de-

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Rex Vic. Lincoln. salut. Precipious tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria prison tua accedas ad Cur B de C. & in plema Curia illareco du. sa la Loquelam que est in eadem Cur. per parvum Breve nostrum d. Recto, inter, &c. de uno mesuagio cum pertin ils 1, & Record. illud habeas coram Justic. nostris, &c. & partibus, &c. & habeas ibi nomina prædict. quatuor hominum, & hoc Breve, & aliud Breve, &c. Quia pr.cd. A in placitand. in Cur. pred. progenitoris proàvi nostri, per quam idem pravuus nostri prosent wit W patrem præd. A (cujus Heres ipse est) de mesuagio præd, ut dicitur, per quad idem A dicit se non debere nec posse sine no-bis respondere: Fiat executio istius Brevis, si causa sit vera, &

[13.]

præd.

pred. A hoc petat, & aliter non. There is another cause in the Register thus: Quia clamat tenere Tenementa predicta ad Communem Legem, &c. But then in the Common Pleas when

A Writ of Right Close is brought, and pendant the Writ the Tenant accepts a fine Sur confluxed does to conce queil ad, 6-c. yet the Land remains Ancient demess as to that Action, because he hash affirmed his Plaint before the Fine; and so was it holden 12 M.7-ROL103.

the Record is removed, he ought there to fhew some special matter to prove the Lands and Tenements to be Frank-see, and not Ancient demesin, otherwise the Plea shall be sent back unto the Lord's Court: but to shew a Fine levied in the King's Court of the

fame Land, or a Recovery had in the King's Court in a Pretipe quied reddat, &c. is a good cause to prove the Lands to be Frank-see; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Mannor, or if he claim to hold them of

11 E.3. Caufe de remover Plea 16. If the Caufe affigued may be tried in Ancient demefin, it shall not be removed.

the King as of another Mannor of Honour,&c. and not to hold them of the fame Mannor; or if he fay, that in an Affice brought be-

fore of the fame Lands or Tenements at the Common Law against another Tenant, that the Tenant said that they were gainst another Tenant, that the Tenant said that they were Lands or Tenements at the Common Law against another Tenant, that the Tenant said that they were that they were Frank-see, where-upon it was found by the Assis that they were Frank-see, and another cause appeareth in the Register, because that there are not any Suitors in the Lord's Court of Ancient demession to do right, &c. But Quart if this be a sufficient cause or not.

but fix Suitors, and one Plaint, and the other Def. therefore removed: fo four no fufficient.

If a Frank-Tenant, of Ancient demess, who holdeth his Tenements by Knights service and in Fee, be ousted and differsed of his Lands or Tenements, he shall see at the Common Law, and not in Ancient demess, for no Lands are An-

26 H.8.4. mon Law, and not in Ancient demein, for n for Lands in cient demein but Lands holden in Socage. Gavelkind, And a man shall have a Bill of Freib fee 14.b.

And a man shall have a Bill of Fresh force within forty daies in the Lord's Court of Ancient demesn for the Lands after the Disserting without suing any VVrit thereupon; as a man shall have of Lands in a City or Borough: and there in that case, if the Tenant hath any matter to prove the Lands to be Frank-see. he shall have a Recordare to remove the Plea out of Ancient demesn into the Common Pleas,&c.

And although the Plea in Ancient demess be there without Writ,&c. if the Tenant remove the Plea out of Ancient demess

26 H.8.4.

3 H.6.34.

demesn by a Recordare, and for cause shewed in the Writ, 34 H.6.35. if the cause be not good, the Tenant in the Common Pleas or 44 E. 3. shall not shew any new cause to retain the Plea in the Common Pleas: but if the cause in the Writ be, which he claims to hold at the Common Law, then in the Common Pleas he may 21 E.3.32. shew what cause he will to retain the Plea there; which demess 12 E.3.32. Br. auncient cause shall prove the Tenements to be Frank-see.

And in Ancient demess, if the Demandant and Tenant 3,5. put themselves upon the Grand Assissor the Tenant vouch 50 E.3. 24 a Foreiner, or plead a forcin Plea which cannot be tried in the Lord the Lordship there; then a Supersideas shall be granted out made a of the Chancery, directed unto the Lord of Ancient delife, that a mess, or his Bailies, if the VVrit were directable to the good Cause. Bailies, that they shall surcease, &c. And the party Desen I H.7.30. dant shall sue his VVrit of warranty of Charter against the per Touns-Vouchee,&c.

And if the Sheriff do remove the Record in Ancient

demesi by Recordare into the Common Pleas, and afterwards the Bailies in the Court of Ancient demess proceed in the Plea (notwithstanding the removing of the Record) then the Tenant may sue a Certionari directed unto the Justices of the Common

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12 H.7. Rot.103, it is holden, that if they proceed after the Record removed and award execution, that it is not void. 16 E.3.3. Process 167. the party had Andia querela against the Judges upon that Case: and 17 E.3. ibid. 186. it was holden that the Sheriff shall be punished for his contempt.

Deman-

Pleas, to certifie the Tenor of the Record into the Chancery; and of this Removement and upon the Certificate into the Chancery, the Tenant shall have an Attachment against the Bailies who proceeded in the Plea directed unto the Sheriff, for to arrest them, retornable in the Common Pleas, to answer unto the King, and also unto the Tenant who fued forth the Recordare. But in Ancient demesn if the Tenant vouch a Foreiner to Warranty, then the Tenant ought to fue his VVrit of warrantia Chartæ retornable in the Common Pleas against the Vouchee, and upon this VVrit fued to purchase a Supersedeas directed unto the Bailies of Ancient demesn, commanding them to surcease until the Plea in the Warrantia Charte be determined in the Com-A mon Pleas. And if the Bailies proceed after such VVrit sued forth and directed unto them, the Tenant who fued the VVrit may have an Attachment of them directed unto the Sheriff, &c. that he do attach them to answer in the Common Pleas at a certain day,&c. as well unto the King,as unto the party, for the contempt, &c. But if the Plea of Warranthe Charta be discontinued in the Common Pleas, then the

[14]

Demandant in the Writ of Droit close may fue a VVrit out of the Chancery directed unto the Justices of the Common Pleas, to certifie the King in the Chancery if the Plea of Warrantia Chartæ be pendant or discontinued, or not, so that if it be discontinued &c. or determined, he may send unto the Bailies of Ancient demesn, that they proceed in the Plea.

v. 13.D.

And if the Tenant claim to hold the Lands of the Lord B 19 R.z. aun in Ancient demesn by Knights Service, &c. the same is a siens demesn good cause for to remove the Plea, because that Lands which are holden of the Mannor, which shall be taken Ancient demein, shall not be holden of the Lord by other Services than Socage; for the Tenants in Ancient demela are called Sokemans, that is to fay in English, Tenants the

Plough.

50 E.3. 6. per Siden-ham, contr. if he refer but Socage Tenure.

And therefore if the Lord of a Mannor in Ancient de-C mesn, before the Statute of Q ia Emptores terrarum, maketh a Feoffment in fee of the parce of the Lands of the Mannor, to hold of him by Knights Service, such Tenant shall not have a Monstraverunt, if he be distrained for other Services than of right he ought to do, because his Lands are not Ancient demesh of the King, and yet they are holden of the Mannor which is Ancient demein: But it is intended of fuch Tenures which shall do the Services of the Plough, viz. to plough and till the Lord's lands, to mow the Lord's Meadows, or other such like Services as are for the maintaining of the Kings sustenance or victuals, and his Subjects; and for fuch Services fuch Tenants have fuch liberties and priviledges in the Law, that they may the more quietly use their Husbandry, and do their Services.

#### Writ de Monstraverunt.

The Writ of Monstraverunt lieth for the Tenants of Anci-D ent demesn who hold by free Charter, and not for those Tenants who hold by Copy of Court-Roll, or by the Rod, according to the Custome of the Mannor, at the will of the Lord And these Tenants ought to be Tenants which hold of a Mannor which was in the hands of S. Edward the King and Confesior, or in the hands of King william the Conquerour; which Mannors are called Ancient demesn of the King, or the Ancient demesn of the Crown of England. And to these Tenants (who hold of such Mannors) there E are many and divers liberties, gifts and grants by the Law:

49 E.3.22.

as, to be quit of Toll, and Passage, and such impositions which

men shall demand of them for the goods and chattels fold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon Ancient demein, as he may for some great cause, whensoever it feemeth good unto him. also Tenants in Ancient demesn ought to be acquitted of the payment of the expences of the

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19 H.6. 66. per Newton, Tenants in Ancient demesn shall be acquit of Toll of things which they fell which are arifing of their Lands, and fo of all things which they buy, which are for the may nurance of the Land; but Quar if they fall be quir for all things bought and fold. Wide 161, they shall be quir of Suits to

Leets and Hundreds. Vid. 22. El. Dyer 377. Register 181. Br. ancient demesn 49.

7 H.6.35. Martin.ac.

Knights which came to Parliaments, and also they ought. not to be impannelled or put upon Juries or Enquests in the Country out of their Mannor or Seignory of Ancient de-Infra: \$507: mein, if they have not other lands at the Common Law for which they ought to be charged,&c. And if such Tenants, or any of them who hold of the Mannor of Ancient demein, be diffrained to do unto their Lords other Services or Customes than they, or their Ancestors have used to do, 40 E.3.44. then they may fue this VVrit of Monstraverunt directed Quare if unto the Lord, commanding him that he do not diftrain they shall have this them to do other Services or Customes than they have used Writ withto do: Or they may have this VVrit of Monstraverunt di- out being rected unto the Sheriff; and that is where the VVrit of diffrained Monstraverunt is first sent unto the Lord, that he do not 1/1 Coul diffrain his Tenants,&c. Or they, upon this VVrit fued and directed unto the Lord, may have and fue another VVrit directed unto the Sheriff, rehearfing, That where he hath fent his Writ unto the Lord of Ancient demesn, that he should not distrain his Tenants, &c. and if the Lord will not do it, and fuffer the Tenants to be in peace, that then the Sheriff shall do it, and cause the Lord to suffer the Tenants to be in peace, and that he do not diffrain them for other Services than of Right they ought to do. And the form of the VVrit directed to the Lord is such:

Rex Abbati de C salutem. Monstraverunt nobes homines tui 40 E.3. these de Manerio de I, quod est de antiquo Dominico Coronæ Angliæ, words prove at dicitur, quod tu exigis ab eis alias Consuetud. Sa alia Ser-may have vitia, quam facere debent, Santecessores sui Tenentes de eodem this Writ Manerio facere consueverunt temporibus quibus Manerium illud before Difuit in manibus progenitorum nostrorum quond. Reg. Ang. vel in ftress. manunoftra. Et ideotibi præcipimus, quod a præf. hominibus non exigas, seu exigi permittas, alias Consuet. & alia Servitia

quair.

quam facere debent, & antecessores sui prædict. facere consueverunt temporibus prædict. Et nist ad mandatum nostrum hoc seceris, A, Vicecom. nostr. Linc', id sieri præcipimus. Teste, &c. And upon this VVrit they may sue another VVrit of Mon-A straverunt directed unto the Sherist, which shall be in this form: Rex Vic. Lincoln', &c. Monstraverunt nobis homines Abbatis de Manerio de I, quod est de antiquo Dominico Coronæ Angl', ut dicitur, quod idem Abbas exigit ab eis alias Consuetive & Alia Servista quam facere debent, &c. [usque ibi, in manu nostra:] per quod eidem Abbati præcipimus, quod a præse hominibus non exigeret, velexigi permitteret, alias Consutud. vel alia Servitia quam facere debent, & antecess. Sui prædictived. facere consuever. tempor prædict'. Et ideo tibi præcipimus, quod nistiedem Abbas ad mandatum nostrum hoc secerit, tu id servi sac', nè amplius indè clamorem audiamus pro desectu Justic', &c.

And it seemeth that by this Writ directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor distrain them for other Services than they ought to do, and that the Sheriff may make refistance and rescous unto the Lord if he distrain the Tenants for other Services,&c. and that the Sheriff may take the power of the County to refift the Lord in fuch case, or the Sheriff may command the Neighbours who dwell next to the Mannor that they refift and do rescous unto the Lord if he will diffrain his Tenants,&c. And it feems they may justifie the fame by the commandment of the Sheriff, if he have fuch a VVrit fent unto him, &c. And after the VVrit directed unto C the Sheriff, if the Lord diffrain, the Tenants may fue an Attachment against him, retornable into the Common Pleas, or the King's Bench, to answer to them for this Contempt; and if it be found for them, they shall recover their dama-

Com.129. 8 H.6.26. And note that the Writ of Monstraverunt shall be sued D by many of the Tenants without naming any of them by their proper names, but generally, Monstraverunt nobis homines, &c. But in the Attachment against the Lord by the Tenants, the Tenants ought to be named by their proper names, thus;

Ren, &c. Si A de B, C de F, & homines Abb M, de Manerie de I, quod est de antiquo Dominico Coronæ Angliæ, ut dicitur, secerint, &c. tunc pone, &c. prædict. Abbat', quod sit coram nobis, &c. ubicunque, &c. ostensurus quare exigit à præsat. hominibus alias Consuetud. & alia Srvitia quàm facere debent, & antecess. Sui, Tenentes de eodem Manerio, facere consuever. temporibus quibus Marerium illud sait in manibus progenitor.

nostror.

nostror, quond.Reg.Anglix, vel in manu nostra, si casus sic fuerit, contra prohibitionem nostram. Et habeatis ibi nomina Pleg', & boc Breve. Teste, &c.

E And there is another VVrit of Monstraverunt; where the Tenants of any Hamlet, which Hamlet is parcel of a Mannor of Ancient demesin, are distrained by the Lord; they shall have such VVrit:

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Rex, &c. Monstraver. nobis bomines tui de Hamleto de I, quod est membrum Manerii de B, quod est de antiquo Dominico Coron. Ang', ut dicitur, &c.

And it feems that in the VVrit of Attachment he ought or may name all those Tenants by their proper names which are distrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their groper names, but in the generality, Et homines, &c. And if one of those who is named by his proper name will not sue, &c. he shall be severed, &c. And he that is Nonshit shall not grieve his Companions. And it seemeth that every one shall recover his damages severally, because they are severally distrained, and one may be more damnified than another, &c.

H And one Tenant may fue the VVrit of Attachment in his own name by his proper name, and in the name of the other Tenants by general words, &c. Et homines, &c.

And if the Tenants do fue an Attachment against the Lord, because he distrained them after the VVrit of Mon-straverunt delivered unto him, and pending the VVrit of Attachment the Lord distrain them again by their goods; then the Tenants shall have a special Writ of Attachment against the Lord, rehearsing the matter; and in the same Writ the Sheriff shall be commanded to re-deliver unto the Tenants their goods, if the Lord have taken them. &c. And this Writ shall be sued only in the name of those Tenants which are again distrained pendant the Suit, and not in the name of them all, as the other Writ is sued: and the Writ shall be such:

Rex Vic. &c. Si A & B., homines Abb. de C, de Manerio de N, quod est de antiquo Dominico, &c. sec. fec. &c. tunc pone, &c. præd. Abbatem, &c. ostensur quare chm nuper ad prosecution. diet. hominum nobis suggerent. præfat. Abbat. exegisse albas Consutud. & alia Servitia quam facere debent, & antecess. Sui, Tenent. de eodem Man. &c. susque ibi, Rez Anglix stibi præciperemus, quod poneres per Vad. & salvos Plez. prædiet. Abbatem, quod esset coram nobis a die Pusche proxim. præterito in quindecim dies, ubicunque, &c. ad respondend. presat. homini-

16.

bus de pramiss. idem Abbas (pendent. coram nobis placito Attachiament. prad.) pradict. homines eò graviùs distrinxit, & omnia bona, catalla ac averia sur in eodem Manerio inventa eis abstulit, & ea eis adhuc detinet, quo minus ipsi placit. Attach. prad. pro paupertate prosequi possint, in nostri ac mandatorum nostrorum pradict. contemptum, & prad. hominium dispendium non modicum, & prosecutionis juris sui retardat', & status sui depressionem manifestam. Et averia, bona & catalla prad. eisdem hominibus per sussicientem securitatem interim deliberare facias. Et habeas ibi nomina Pleg', & hoc Breve. Teste, & c.

And in this Writ of Monstraverunt, the Plaintiff in the A Writ of Attachment may count severally, and then they shall recover several damages. But they may count together in one Count, and declare how they were severally distrained, &c. and it is not necessary to alledge in the Count the day, or the place where the Lord distrained them. And the

form of the Count or Declaration is such:

A B summ. fuit ad respondendum C, D, & F, & hominibus præd.A, de Manerio de S, quod est de antiquo Dominico Coronæ Angl',&c. de Placito, Quare exigit ab eis alias Confuetud. & alia Servitia quam facere debent, et eor. anteceffores, Tenentes de codem Manerio, facere consueverunt temporibus quibus Manerium illud fait in manibus progenitorum,&c. Regum Angl', ad grave damnum ipforum C, D, et F, &c. Et unde iidem homines per T S Attorn. fuum queruntur, quod cum corum anteceff. Tenent. de eodem Manerio tempore pro Manerium illud fuit in manibus Domini Henrici quondam Regis Angl', proavi eidem avo Domini Regis nunc, tenuissent Tenementa sua per certa Servic', scil. quilibet corum tenebat unum virgat. terr. de codem Maner', &c. per fidelitatem et servic. quinque solid', et faciend. Sect. ad Cur. dicti Maner. de S bis in anno, viz. ad Festum sancti Mich. et ad Festum Paschæ; et si contigisset Breve de Recto fuisse in eadem Cur. placitand', faciend. Sect.in eadem Cur. de tribus septimanis intres septim', &c. quamdiu Breve illud pendens fuit in eadem Cur; et quando Dominus Rex burgo, suos et Dominica sua talliaverit,&c. pro omnibus Servitiis; et qui plus Terra tenuissent de prædict. Maner' plus redditus redderent,&c. Et iidem Tenentes hujusmodi statum continuâssent à tempore ejusa. Hen. proavi, &c. de Rege in Regem progenitorum, &c. usque ad tempus præd. Domini Regis Edwardi avi,&c. Quod prædictus A, Dominus Manerii prædicti, distrinrit ipsos C, Det F, et alsos homines, &c. ad Sectam faciend. ad præfatam Curiam de tribus septim. in tres sprimanas per totum annum, &cc. et talliando ipsos alto et basso pro voluntate sua, exigend abeis pro filiis et filiabus suis mari-

tand', et alia Servitia et Consuetud. Villain', que facere non

debent,

39 E.3.6. rer.Monftr. 2. 49 E.3. per Belknap. debent, nec folebant : unde hic. quod deteriorati funt et damnum habent ad valentiam C.l. et inde produc. Sectam, &c.

And whether they shall recover severally damages upon that joynt Court, it is a doubt; yet it feemeth reasonable that they may, because it is several in its nature, because they count upon their several Tenures,&c. and how that he hath distrained them severally; by which it seems but reafonable that the Jury do enquire of the damages feverally, if they pass for the Demandants, or that several Writs of enquiry of damages be awarded in that case, if the matter be adjudged with the Demandants. But it feems no Tenant fhall recover damages, but those who are specially named in the Writ of Attachment fued upon the Monstraverunt, and not the other men.

And note, that the Lord of Ancient demesn shall not be put to answer to the Writ of Attachment sued against him upon the Monstraverunt, before the Court be certified by the Treasurer and Chamberlains of the Exchequer, whether the Mannor be Ancient demeln: And therefore it behoveth the Plaintiffs in the Monstraverunt to sue forth a special Writ unto the Treasurer and Chamberlains of the Exchequer to

certifie the same: And the Writ is such:

Rex Thefaur. et Camerariis suis salutem. Quia quibusdam certis de causis certiorari volumus , utrum Manerium de I in Com. C sit de antiquo Dominico Corona Anglia necne, vobis mandamus, quod scrutate Libro nostro de Domesday, de eo quod inde inveneritis nos, sub sigillo nostro Scaccarii nostri, distincte et aperte fine dilatione redd. certiores, remittentes nobis hoc Breve. Tefte,

And note, that the Book which is called Doomsday-Book was made in the time of S. Edward, and all the lands which were in the Seifin and in the hands of the faid S. Edward at the time the faid Book was made are Ancient demelin, and the lands which were in other hands and are not named in 2 R.3.1.

F the faid Book are Frank-fee; and those Tenants which held 39 E.3 6. in base Tenure, as by Copy of Court-Roll, or by the Rod, cannot fue nor maintain this Writ against the Lord: And the death of one Tenant, nor his Non-fuit, shall not abate

F the Writ. And if the Frank-Tenants and the Tenants by base Tenure joyn in a Monstraverunt, the Writ shall not abate, but for the Tenants by base Tenure.

[17.]

#### Writ de Warrantia Diei.

TRit of Warrantia Diei lieth in case where a man hath A Day in any Action brought against him to appear in proper person, and the King at or before the day send him in or about his Service, fo as he cannot appear in Court at the daysthen may he fue forth this Writ directed to the Juffices, reciting the whole matter, sommanding them that they do not record his Default for that day for the cause before mentioned: And it is not material whether the cause be true or not, when the King doth certifie that the party is in his service. For it seemeth by the words of the Writ, that the King by his Prerogative may warrant this Default for a day. And so it seemeth, that if the Tenant in a Pracipe quod reddat at the Grand Cape or the Petit Cape returned make Default, that before Judgment upon this Default the King may fend such a Writ unto the Justices, rehearing that the party is in his Service, and commanding them that his Default do not prejudice him: and it standeth with reason that the King may fo do, because that every one is bounden to ferve the King in his bufiness. But what process shall the B Court award if the Tenant will not appear at the day of the Default recorded, nor after when the Writ of warrantia Diei comes unto the Justices? it seemeth a new Summons shall iffue out of the Common Pleas to summon the Tenant anew, because his Default at his return is excused by the Writ of warrantia Diei. But if the Writ of warrantia Diei do not excuse the default at the Grand Cape, then it seems a new Grand Cape shall go forth upon the first Default returned at the Summons of the Pracipe quod reddat. Quare of c that. And the King may grant fuch Writs to fave two Defaults at two feveral daies,&c.Quære of these matters,because they are out of use at this day. And the form of the Writ is fuch:

Rex Justiciar. Suis de Banco salutem. Sciatis quod A suit in D servitio nostro per præceptum nostrum die Lunæ in Crastin. xv. Pasch, proxim. præterit, it à quod éo die interesse un potuit Loquel. quæ est coram vobis per Breve nostrum inter B petent. E præd. A Tenentem, de umo mesuagio cum pertinen. in N, undeidem A C versus prædict. Binde vocavit ad war, ut dicit: Et ideo cobis mandamus, quod præd. A, propter absentiam suam ad illum diem, non ponatur in desciu, nec in aliquo sit perdens. enia diem illum quoad boc warrantizabim. Teste, & C.

The form of the Writto he two Defaults is: Rex,&c. ut fuprá.

supra. Sciatis quod A snit in servitio nostro per praceptum nostrum die Jovis in Octabis S. Hil', et die Lunæ in Crastin. Animarum proxim. præteritis, it à quod diebus ill. interesse non potuit Loquel, quæ est coram vobis per Breve nostrum inter, &c. Et ideovobis mandamus, quod præd. A, propter absentiam suam ad dies illos, non ponatur in defectu, quia dies illos quoad hoc ei warrantizabimus. Teste,&c.

And these two Writs are not granted but by the King himself by the Rule of the Register; and the King may grant such Writs unto the Maiorand Sheriffs of London, or unto the Bishop of Durbam in the County Palatine, or unto the Justices of Assie, or in the Eyre, or unto the Sheriff: and these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writis such:

Rex, &c. Sciatis quod A fuit in servic. nostro die Lunæ in Crastino Quinden. Pasc. proxim. præterit, ità, &c. inter ipsum A Petentem, et B Tenentem, &c. And there it shall be said in Crass. Quind. Pasc. because that the Pleas cannot be holden Quind. Pasc. because that is Sunday, which is the Sabbath-day. And the King may grant this Writ by Testimony of his Steward thus:

Rex,&c. Quia A fuit coram Sen. et Mareschallo nostro die Lun. in Quindena sancti Johannis Baptist proxim. præterit. in divers. inquisti, quæ coramiisa. Senesc. et Maresc. prædict. die sum. suer. apud E, sicut idem Sen. noster coram nobis testisticatus est: Vobis mandamus, quod præd. A, pro eo quod non venit coram vobis in aliis inquis. quæ coram vobis eod. die summonssur, non amerciemini, nec exitus, si in quos coram vobis ea occasione inciderit, perdere permittat. Teste,&c.

And it feems by this Writ, that the Juftices ought to make a special Entry thereof, and to save the issue of this Jurour, and also to make a special Estreat of this matter, and to levy no issues upon these Jurours for whom such Writs come unto the Justices.

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H And if a man be effoigned of the K. service in any Astion, &c. whereas in truth he is not in the K. service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery directed unto the Justices, rehearsing that he is not in the King's service, commanding them to proceed. But by the Statute of Gloucester, if he do not bring his Warrant at the day given, he shall lose xx s. for the journey; and shall be in the King's mercy, and the Esson dissolved. And if the Plaintiff purchase such write directed to the Justices, that he is not in the King's service, then the Essoin shall not be adjourned, but shall be presently quashed, and he shall

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[17.]

#### Writ de Warrantia Dici.

7 Rit of Warrantia Diei lieth in case where a man hath A Day in any Action brought against him to appear in proper person, and the King at or before the day send him in or about his Service, fo as he cannot appear in Court at the day; then may he sue forth this Writ directed to the Justices, reciting the whole matter, sommanding them that they do not record his Default for that day for the cause before mentioned: And it is not material whether the cause be true or not, when the King doth certifie that the party is in his service. For it seemeth by the words of the Writ, that the King by his Prerogative may warrant this Default for a day. And so it seemeth, that if the Tenant in a Pracipe quod reddat at the Grand Cape or the Petit Cape returned make Default, that before Judgment upon this Default the King may fend fuch a Writ unto the Justices, rehearfing that the party is in his Service, and commanding them that his Default do not prejudice him: and it standeth with reason that the King may fo do, because that every one is bounden to ferve the King in his bufiness. But what process shall the B Court award if the Tenant will not appear at the day of the Default recorded, nor after when the Writ of warrantia Diei comes unto the Justices? it seemeth a new Summons shall iffue out of the Common Pleas to summon the Tenant anew, because his Default at his return is excused by the Writ of Warrantia Diei. But if the Writ of Warrantia Diei do not excuse the default at the Grand Cape, then it seems a new Grand Cape shall go forth upon the first Default returned at the Summons of the Pracipe quod reddat. Quære of C that. And the King may grant such Writs to save two Defaults at two feveral daies,&c.Quære of these matters,because they are out of use at this day. And the form of the Writ is fuch:

Rex Juficiar, suis de Banco salutem. Sciatisquod A fuit in D servitio nostro per præceptum nostrum die Lunæ in Crastin. xv. Pasch, proxim. præterit, it à quod eo die interesse un potuit Loquel.quæ est coram vobis per Breve nostrum inter B petent, & præd. A Tenentem, de uno mesuagio cum pertinen, in Nyundeèdem A C versus prædict. Bindè vocavit ad Warr, ut dicit: Et ideo vobis mandamus, quod præd. A, propter absentiam suam ad illum diem, non ponatur in desectu, nec in aliquo sit perdensem a diemillum quoad boc warrantizabim. Teste,&c.

The form of the Writto fue two Defaults is: Rex,&c. ut fuprá.

suprà. Sciatis quod A snit in servitio nostro per præceptum nostrum die Jovis in Octabis S, Hil', et die Lunæ in Crastin. Animarum proxim. præteritis, it à quod diebus ill. interesse non potuit Loquel. quæ est coram vobis per Breve nostrum inter, &c. Et ideovobis mandamus, quod præd. A, propter absentiam suam ad dies illos, non ponatur in desectu, quia dies illos quoad hoc ei warrantizabimus. Teste &c.

And these two Writs are not granted but by the King himself by the Rule of the Register; and the King may grant such Writs unto the Majorand Sheriffs of London, or unto the Bishop of Durham in the County Palatine, or unto the Justices of Assie, or in the Eyre, or unto the Sheriff: and these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writis such:

Rex, &c. Sciatis quod A fuit in servic. nostro die Lunæ in Crastino Quinden. Pasc. proxim. præterit, it à,&c. inter ipsum A Petentem, et B Tenentem,&c. And there it shall be said in Crass. Quind. Pasc. because that the Pleas cannot be holden Quind. Pasc. because that is Sunday, which is the Sabbath-day. And the King may grant this Writ by Testimony of his Steward thus:

Rex,&c. Quia A fuit coram Sen. et Mareschallo nostro die Lun. in Quindena sancti Johannis Baptist proxim. præterit. in divers. inquisit, quæ coram iist. Senesc. et Maresc. prætist. die sum. suer. apud E, sicut idem Sen. noster coram nobis testificatus est: Vobis mandamus, quod præd. A, pro eo quod non venit coram vobis in aliis inquis. quæ coram vobis eod. die summonsur, non amerciemini, nec exitus, si in quos coram vobis ea occasione inciderit, perdere permittat. Teste, &c.

And it feems by this Writ, that the Juftices ought to make a special Entry thereof, and to save the issue of this Jurour, and also to make a special Estreat of this matter, and to levy no issues upon these Jurours for whom such Writs come unto the Justices.

And if a man be effoigned of the K. service in any Astion, &c. whereas in truth he is not in the K. service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery directed unto the Justices, rehearsing that he is not in the King's service, commanding them to proceed. But by the Statute of Gloucester, is he do not bring his Warrant at the day given, he shall lose xx s. for the journey; and shall be in the King's mercy, and the Esson dissolved. And if the Plaintiss purchase such write directed to the Justices, that he is not in the King's service, then the Esson shall not be adjourned, but shall be presently quashed, and he shall

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not have day by adjournment to bring in his Warrant to warrant the Essoin.

## Writ of False Judgment.

Rit of False Judgment lieth where False Judgment is I T18.7 given in the County, or in the Hundred, or in other 22 Aff.64. Court-Baron which is not a Court of Record, in a Plea Real Br. Error or Personal, as if in a Writ of Right Patent, or in other 120. If the Free-holder Personal Plea; there the party Plaintiff or Defendant which be recorded is grieved shall have this Writ, and the Writ shall issue first A · by Plea, out of the Chancery: And if the False Judgment be given where it in the Sheriffs County-Court, then the Writ shall be direought to be cted unto the Sheriff himself, and shall be such: by Writ, it

is Errour, and not void, & coramnon judice: But where Judgment is given of Land, Contract, or Covenant, which is out of their Jurifdiction, it is void, & co-

ram non judice.

Henric',&c.Vic. Line. salut. Si A fecerit,&c. tune in pleno B Com. tuo record. fac. Loquelam quæ est in eod. Com. per Breve nostr. de Recto inter A Petent. & B Tenent', de uno mesuage et cent. acr. terræ cumpertin. in C, unde idem A queritur falsum sibi factum fuisse judic. in eod. Com'; et Record. illud habeas coram Justic. nostr. apud Westm. tali die sub sigillo tuo, et per quatuor lezal. Milit.ejusam com.ex illis qui Record. illi interfurunt: et summ. per bonos Sum. predict. B, quod tune sit ibi; auditurus Record. illud. Et habeas ibi Summ', nomina quatuor

Vide 4 & 5 Ma. Dyer 164. the Writ was challenged because it

was fub figillo tuo & sigillu quatuor legalium hominum ejusdem Curia, and good, ut sem-

Militum, et boc Breve.

And if the Tenant hath aliened the Land after Judgment given against the Demandant, then the Summons shall be made in the Writ against him who is Tenant of the Land, and against him who was Tenant at the time of the Judgment given, by these words, viz. & summ. per bonos Summ. pred. B et C, qui message, et terramillam nunc tenent, quod tunc sint ibi, audituri, &c.

And if the False Judgment be given in another Court-D Baron than in the Sherists Court, then the Writ of False Judgment is called a Writ of Accedas ad Curiam, and shall be directed unto the Sherist; and the Writ is such:

Rex Vic. Linc. salutem. Si A fece it le securum de clam, suo prosequend, tunc assumptis tecum quatuor discret. et legalibus Militibus de Com. tuo, in propria person. tua acced. ad Euriam B de C, et in plena Curia illa record. fac. Loquelam qua sui in tadem Curia per Breve no strum de Resto inter A Petent. et B Te-

ment'.

nent', de uno mesuag. &c. unde A queritur falsum sibi factum suisse jusselle judicium in ead. Curia; et Record', &c. sub sigillotuo, et per quatuor legales homines ejusdem Curiæ ex illis qui Recordo illi intersurunt; et summ', &c. et babeas ibi nomina prædict. quatuor hominum, et hoc Breve.

And in this Writ of Accedas ad Curiam he shall take with him four men, but it needeth nor that they be Knights! but so shall it not be in the other Writ of Recordari facias Loquelam, which is in the County. But both Writs shall be returned under the Sherist's Seal, and the Seals of four of the Sutorsof the same Court. And in the Writ of False Judgment which is Accedas ad Curiam, it is a good Return for the Sherist for to say, that after the receipt of the Writ, and before the Return thereof, no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same. And thereupon the Justices shall award a Distringus directed unto the Sherist, to distrain the Lord to hold his Court; and Sicut alias, &c.

In a False Judgment against an Abbot the Plaintiff was Non-suit, and the Abbot had a Scire factas against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed returnable at 15 Passe, which day the Plaintiff appeared, and assigned his Errors, and tendred Sureties to sue with effect, and prayed a Scire factas against the Abbot to bear Errors. And the opinion of the Court was, that he might assign the Errors against the Abbot, without suing any Scire factas against him, because they had day by the Roll.

If the Writ of False Judgment abate for default in the Writ, then the Plaintiff shall not have a Scire facias ad andiend. Errores upon the Record certified, because it cometh without an Original, when the Original abateth. But if the Plaintiff die, it seems that if the False Judgment be given in the base Court upon a Writ of Droit Patent, that then his Heir shall have a Scire sacias ad audiend. Errores against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be Non-suit, whether the other party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a Scire facias, is a question But Hill. 23 H.6. the opinion was, that he shall have Execution without suing forth a Scire facias.

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And Tenant at will according to the custome of the Mannor, which is Tenant by Copy of Court Roll, shall not have 14 H.4.39. 4 Writ of False Judgment upon a Judgment given against 7 E.4.23.

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hum:

34 H.6.43. contrary, if the Tufticies be removed Bench by a Pone.

2 H.4,4. 21 E.3.45.

therefore it feemeth Error lieth in a Court of Pipowder. Vid. 13.E.4. 18.6 E.4.43. 7 E.4.23.

19. 12 H.4.23. contr. and 21 H.6.34. the party had a Some Execution out of the Common Pleas.

him: But where False Judgment is given upon a Writ of Justicies directed unto the Sheriff, the party grieved shall have a Faux Judgment, and not a Writ of Error, although in the King's the Judgment be of Debt, or Trespass over the sum of 40 s.

And a man shall not have a Writ of False Judgment but in the Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them. And upon False Judgment given in Court before Bailies or others who hold Plea by prescription, in every sum in Debt by Bill before them, he shall not have a Faux Judgment, but 45 E,3.1. ac' a Writ of Error thereupon. Quod vide M.4. E.4. in Title Trespass.

In False Judgment upon a Writ of Right Patent or a I Writ of Droit close the Plaintiff shall not assign Errors before the Records certified, as well the Original as the refidue of the Record. And the Writ of False Judgment lieth against a stranger to the Judgment, if he be Tenant of the Land, without naming him who was Tenant and party to the Judgment. Otherwise it is of a Writ of Error, for there he ought to name him who was party to the Judgment, be he Tenant or not.

And where the Tenant loseth his Land by False Judg- A ment in a Writ of Right in a Court-Baron, he shall not have a Writ of False Judgment before that the Demandant hath entred upon him,&c. Quod vid. M.38.E.3.

And where the Defendant in Faux Judgment after ap- B fac. to have pearance by him maketh Default, a Grand diffres shall iffue out against him. And if he again make Default, or cometh and will not fave his Default, the Plaintiff in the Writ of False Judgment shall have Judgment to recover Seisin of the Land against him: quod vide M.13.E.2. And the Writ of False Judgment given in Ancient demesn is such:

Rex Vic. falut', Si A fecerit, &c. accedas ad Cur. B, &c. & C recordari fac. Loquelam que est in eadem Cur. per parvum Breve nostrum de Recle inter A Petentem, &c. & habeas ibi nomina prædict. quatuor hominum, hoc Breve, & aliud Breve,&c.

And in a Writ of Droit close, if the Writ of the Demandant be abated, whereupon he bringeth his Writ of False D Judgment in the Common Pleas, and there the Judgment is reversed, and the Writ awarded good; then he shall hold Plea in the Common Pleas, and a Judicial Writ shall issue from the Common Pleas in nature of Protestation made in the first Writ; and if the Protestation were in the nature of Assise of Mortdauncester, the Justices shall direct a Writ anto the Sheriff to fummon the Jurors to come out of An-

unto

cient demess thither, and all the matter shall be tried and determined in the Common Pleas: and although the Judgment be given of the Land in the Common Pleas, yet the Land shall be Ancient demess. Quod vide M. 3 E. 2. in Title

of Faux Judgement.

And upon the Writ of Faux Judgment which is an Acce-E das ad Curiam, if the Sheriff return that the Writ aded tarde ven', quod Executionem ejuschem facere non potuit; then he shall have a Sicut alias directed unto the same Sheriff: and if he return not that at the day, then he shall have a Pluries to the same Sheriff. And he may have these Writs of Alias and Plaries out of the Common Pleas where the first Writ was returned tarde, if he will, or he may have them out of the Chancery, &c. See for this matter in the Book of Entries, fol. 114, & 115. And upon the Accedas ad Curiam, if the Sheriff return, that he will go unto the faid Court, and there pray the Lord to hold his Court, that he may doe Execution of the Writ, and that the Lord refuseth to hold his Court, &c. by reason whereof he cannot doe Execution of the writ; then a Diffringas shall issue out of the Common Pleas directed to the Sheriff, to distrain the Lord, fo that he diffrain him to hold his Court at a certain day appointed by the Sheriff; Et quod Vice', affumpt, secum quatuor discretis Militibus, &c. de Comitat', &c. accedat ad Curiam. &c. & Scire fac. hic in xv. Pafche, &c. & Record, illud tune habeat, &c. & quod fumm. pred. I, quod fit ibi, auditurns Record. illud, &c. Quod vide Lib. Intrac' fol. 117.

There is another Writ of Faux Judgment; when there is a Plaint in the County of debt or Trespass without any Writ, than the Writ of Faux Judgment in the County shall be thus: Recordar. fac. Loquelam que fuit in eadem Curia sine Brevi nostro, inter, &c. de quadam transgr, &c. unde idem A querit. falsum sibi fast. tuisse judic, &c. And where Faux Judgment is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ shall be thus:

Rex Vic. salut. Si A fecerit, &c. tunc accedas ad Hundr. A de B, vel ad Curiam A de C, & in pleno Hund. vel Curia recordari fac. Loquelam quæ est in eodem Hund. vel Curia per Breve nostrum, vel sine Brevi nostro, de eo quòd idem A teneat præfat. B. conventionem inter eos factam de uno mesuagio cum per-

tin.in F, unde queritur, &c.

And if Baronand Feme befued in a Court-Baron by a Writ of Right, and the Feme is received for the Default of the Husband, and plead there, and false Judgment is given against him, she and the Husband may have a Writ of False Judgment, as appeareth by the Register.

And

And there is another Writ there, where the Husband and H Wife pray to be received in a Court-Baron in a Writ of Right upon the default of Tenant for term of life, and were not received; and for Falle Judgment given against the Tenant for term of life they shall have a Writ of False Judg-

ment.&c.

There is another Writ of Faux Judgment in the Register for him in the Reversion, who prayeth to be received in a Court-Baron in a Writ of Right upon the Default of two Tenants for life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain parcel of the Land, and the other Tenant was Tenant of the other parcel of the Land.

There is another Writ of Faux Judgment for him that I hath Judgment given against him in the Court of a Lord, who hath power to hold Pleas before his Bailies by the King's Charter: but it seemeth that in that case he shall have a Writ of Error, and not a Writ of Faux Judgment.

There is another Writ of Faux Judgment directed unto K the Sheriff, viz. Accedas ad Curiam: Ad Curiam nostram de

Winchester, & in plena Curia illa record. fac. Loquelam que fuit in eadem Curia fine Brevi noftro, fecundum Confuetudinem Civitatis pradict', inter W Petentem, & D Tenentem, de uno mesuagio in Winch. prædict', unde idem W, &c. queritur falfum fibi factum fuiffe judic', &c. But upon Affife of Freft L force a Writ of False Judgment doth not lie, but a Writ of Error. And if the Writ of False Judgment be returned before the Justices of the Common Pleas, and the Defendant comes and faith and averreth that the Record is otherwife than it is certified, the Averment shall be received, and that iffue shall be tried by the Country, or by those who were present in Court when the Record was made, and by others of the Country; and if they come not, then the Enquest shall be by the Country, as appeareth by the Stat. de Anno I E.3.cap.5. Raftal, Faux Judgment 2.

### Writ de Executione Judicii,

TRit de Executione Judicii lieth where Judgment is given A in the Court of any Lord upon aWrit of Right Patent, or upon a Plea of Debt, or Trespais, in the same Court, or in the Hundred, County, Court-Baron, or in any other Court

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34 H.6.42.

Court of Record; and if the Sheriff or the Baily will not do Execution of the Judgment, then the party shall have this Writ directed unto the Sheriff or the Baily, in which Court the Execution ought to be; and if they will not do Execution, he shall have an Alias and a Pluries, with this clause in the Writ of Pluries, vel causam nobis significes quare, &c. And if they do not Execution upon this Writ, or return not some reasonable cause wherefore they delay the Execution, the party shall have an Attachment against him who ought to have done the Execution returnable into the King's Bench, or into the Common Pleas. And if the Plea be in the Lords Court-Baron, then the Writ of Execution shall be directed unto the Baily of the Court. But if the Plea and the Judgment be given in the Sheriffs Court, as in the County-Court, then the Writ shall be directed unto the Sheriff himself to do Execution, and the Alias and Pluries shall be to the same Sheriff; and if they will not do Execution of the Judgment, then an Attachment against the Sheriff shall be directed unto the Coroners, returnable as abovefaid, to answer, &c. And so if the Writ de Executione Judicii be directed to the Bailies of any Court of any Lord, or unto the Bailies of a Hundred, to do Execution, and at the Alias and Pluries they will do nothing, the Attachment shall be to the Sheriffs against the Bailies, returnable as aforefaid, to answer,&c. And if the Judgment be in a Court of Record, then it seemeth that the VVrit de Executione Judicii shall be directed unto the Justices of the fame Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the VVrits directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The form of the VVrit is:

Henr', &c. Lancastr' salut'. Præcip, tibi, quod Execution. judicii nuper reddit. in Com. tuo de Loquela quæ fuit in eodem com.per Breve nostrum de Recto, inter A Petentem, & B Tenentem, de uno mesuagio cum pertin. in I, sine dilatione fieri sac',

O.c. Tefte, O.c.

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37 Aff. 17.

38 H.6. 30.

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## Writ de Error.

Hat Star: 1Por: Writ of Error properly lieth where False Judgment D 2/ 3469: ( I is given in any Court which is a Court of Record, as in the Common Pleas, or in London, or other City, or other The form of place where they have power to hold Plea by the King's Charter, or by prescription, in any sum in Debt or Trespass Writ of Error to the over the sum of 40 s. And if false Judgment be given in Justices of London, or other place which is a Court of Record, the parthe Comty grieved shall have a Writ of Error, and this Writ may mon Pleas is be returned into the Common Pleas, or into the King's Joh. Trifot

Taft. do focon fuis, & non Capital. Juft.tantum; for the Records there are not before him alone. But in the Exchequer the Writ is not Thefaurario & Baronibus, but Baronibus tantum. 34 H.6.27. Error was brought 3.die from the Return, where the Judgment was the first day, and well, because after the Judgment. 15 E.4.18. If a Record be removed out of the Exchequer into the Exchequer-Chamber by Error, when Judgment is given all shall be remanded into the Exchequet, and Execution shall be awarded there; but that is by the Statute of 31 E.3.cap. 12.otherwise it is of other Courts.

Bench, at the pleasure of him who sueth the same.

And when the Record is removed by Writ of Error into E the Common Pleas or King's Bench, then the Plaintiff ought to affign his Error, before he have a Scire facias against the Defendant ad audiendum errores. And if he affign divers ment of ma- things for Errors which the Court thinketh to be no Errors. ny Errors in he shall not have a Scire facias upon this Assignment. But after Errors affigned, and a Scire facias awarded against the Defendant upon that Assignment, he shall not assign an Error in fact, as to fay, that the Plaintiff was dead at the time of affigned Er- the Judgment, or before the Judgment, &c. But he may ror upon an affign as many Errors as do appear in the Record, and it iffue, and the shall not be said a double Assignment. But he shall assign for Error but one Error in fact, because this Error in fact shall the Original be tried by the County, and the Errors in the Record shall be tried by the Justices.

not good, for And upon a Writ of Error the Record it felf shall be F it was ex afremoved, and not the Transcript of the Record: for upon a Transcript of a Record a man shall not assign Errors, if it ought to be be not upon a Writ of Error fued upon Transcript of a Fine, there he shall assign Errors upon the Transcript of the Note of the Fine; and if the Justices do conceive it Error, Court ex of then they shall send for the Note of the Fine, and shall reverse the same.

In a Writ of Error when the Record cometh in Court, if G the Plaintiff all that Term do not affign his Errors, and al-

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though that he do affign his Errors, if he do not fue a Scire fac. ad audiendum Errores against the Defendant, returnable the fame Term, or the next Term; all the matter is discontinued, and the next Term he ought to fue a new Writ of 2 H.7.12. Error out of the Chancery, upon that Record directed to the Justices before whom the Record is removed, to pro- If the Write ceed upon the Record que coram vobis refidet.

The form to affign Errors is to put a Bill into the Court, hath longer and to fay in the Bill, in hoc erratum est, &c. and to shew in day of recertain in what things; and in hoc erratum eft, and shew in turn than it certain in what things; and in not erratum ep, and the will ought to certain another thing: and fo of the reft in which he will ought to have, the assign the Errors. But to say, in omnibus erratum est, is not Justices of

good, because of the incertainty.

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And in a Writ of Error he ought to affign his Error in mon Pleas proper person, and not by Attorney, where he is in Exe- may shorten cution by force of the Judgment. And in a Writ of Error the day. upon Judgment given in the Common Pleas, the Plaintiff \$ H.7.3. cannot affign for Error, that the Juffices of the Common 7 H.74. Pleas did not give that Judgment, but the Clerks of their 21 H.6.43. own heads; neither can he affign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entred it for the Plaintiff, and gave Judgment for him: because that this Affignment is contrary to that which the Court doth as Judges,&c.

And if a man be vouched, and entreth into Warranty, so E.3.A.J. and loseth, he may have a Writ of Error, and affign the the Rever-Errors which happened betwixt the Demandant and the fion was Tenant, or betwixt the Demandant and the Vouchee. And granted to fo he in the Reversion who prayeth to be received upon the the Writa-Default of Tenant for life, or for his faint Pleading, if he gainst the be received, and pleadeth, and loseth, he shall have a Writ Lessee for of Error, and assign the Error betwixt the Demandant and life; or if the Tenant, or between the Demandant and him who praythe Tenant
eth to be received. And if Tenant for life loseth by Default, in Fee pray
the Demandant and him who praythe Tenant
the Tenant
the Tenant, or between the Demandant and him who praythe Tenant
the Ten he in the Reversion shall have a Writ of Error, although ftranger, he were not received, nor prayed to be received, and shall Quare, for affign for Error the matter which was betwixt the Deman- in these cadant and the Tenant who loft by Default. 8 H.4.55,56. A man shall assign an Error in Law as the Case is:as if Reversion

the Husband and Wife levy a Fine of the Lands of the Wife hall have unto a stranger, the Wife being within age, they shall have a Writ of Error during the Nonage of the Wife, and shall af- 50 E.3.5. fign that for Error, and that is an Error in Law of the Court, if the Judgment shall be reversed, and that Execution shall be awarded, or shall cease during

the life of the Husband

3 c H.6.12.

Alfo in a Writof Entrie fur Diffeifin, if the original Writ E 20 Aff.2.ac. 21 E.3. Fitz. want these words in the Writ, Quamclamat effe jus et bæreditatem suam, if the Tenant admit of the Writ, and plead to Error 4. 7 H. 6.39. the Action, and loseth, he shall not assign this fault in the matter in Writ, because he hath admitted the Writ to be good by his fuit must be pleaded, and Plea. And fo in a Writ of Detinue of Charters concerning hall not be certain Lands, if the Plaintiff in his Count do not declare affigned for the certainty of the Land in the Count, if the Defendant Error. & E. do admit the Count good, and pleadeth unto the Action 4.19. By Pi- and loseth by Judgment given in a Writ of Error sued by get and him, he shall not affign for Error the fault in the Count, Choke, in because he hath admitted the same to be good by his Plea. Joynt-tenancy, Ge- Tamen quære. neral-tenan-

ey, Misnofmer, taking of Husband pendant the Writ, and the like, which prove the Writ abatable; there if the party plead other matter, and admit the Writ, he shall not have Error: Contra of Death or other thing, which prove the Writ abated.

And a man shall not assign for Error a thing which is for his advantage as to say and assign for Error that he had day, and that the day was for longer time than the common day: and so he shall not assign for Error that he was essentially where he ought not to be essentially or had Aid granted

46. Br. Error unto him, where he ought not to have had Aid; because 65, and Tri- these things are for his advantage.

65. and 171- there things are for ins advantage.

18 falle Judgment be given before the Justices of the Bi-G

19 H:6.12. If falle Judgment be given before the Justices of the Bi-G

19 H:6.12. If falle Judgment, the party grieved falle Judgment in the County Palatine, the party grieved falle before the fame Bishop M.

14 E.3. And if he give false Judgment, then the Writ of Errors there before the fame Bishop M.

15 Error shall be fued in the Common Pleas, or in the King's Errors there

thall be re-

versed in B.R. if there be Justices there; but by Fortestus it shall be reversed in Parliament, 19 H.6.12. Error in County Palatine shall be reversed in B.R. 21H.7.33. per FinemeErroneous Judgment in County Palatine shall be reversed there by Commission. 37 H.6.13. Error in Chancery reversed in Parliament. But see 14 El. Dyer 315. That Error upon a Scare facion upon a Recognisance was reversed in B.R. which seemeth contrary to 37 H.6.13.

7H.4.37.

And if false Judgment be given for the King in any Suit H or Action, the party grieved shall have a Writ of Error, and assign his Errors, without suing forth any Scire facias against the King ad audiendum Errores, occasses that the King is always present in Court; and that is the cause that the form of Entries of Suits for the King is such: Christopher Hales, Attorn. Demini Regis, qui pro Demine Rege sensiting Sec. vir. his

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in Cur', &c.and not, Dom. Rex per C H, Attern. fuum, ven. bic 1 H.7.13. in Cur', because that the King is always present in Court. It is faid, if reverse utlagery in felony, when he cometh in upon the Indicament, he shall affign his Error before he profecuteth his Writ of Error.

Error in the King's Bench in the Process, where it is the Default of the Clerks, shall be reverfed in the same Court by a Writ of Error fued by the party before the same Justices: but not without fuing of a Writ of Error, although it be the fame Term. But in the Common Pleas, after

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Vide 4 E. 4.41. 7 H. 6.28. Hidebread's Case. 19 H.6.2. 15 E.4.78. 37 H.6.17. per 3 Justices. If a man be utlage notwithstanding a Superfedear, and appear and plead in the Common Pleas, the utlagery shall be reversed in the same place, although it be in another Term; but contr. if it be in another Term, and the Defendant doth not appear and plead.

Judgment given the same Term the Justices may reverse their own Judgment upon Error in the Process, or for default of the Clerks, without any Writ of Error fued forth; but in another Term, the party ought to fue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law which is the Default of the Juffices, the fame Court cannot reverse the Judgment by a Writ of Error, nor with a Writ of Error, but this Error ought to be redressed in another Court before other Justices by a Writ of Error.

And he which confesseth the Demandants Action shall have a Writ of Error to reverse that Judgment, against his

Confession upon Erroneous Judgment given. In Plea of Land against the Tenant, and the Tenant dy- 3 H.4.19. eth, he who is Heir of the Tenant to that Land shall have the Daught. a VVrit of Error, and not he who ishis Heir at the Com-brought Er-mon Law: as in Borough-English if the Tenant lose the ror, although Land by Erroneous Judgment, the youngest Son shall have a Son were Mthe VVrit of Error. And so he which is Heir unto the speci- Heir at altail shall have the VVrit of Error, if the Land be lost by Common Erroneous Judgment. The Tenant may have one Writ of Law. Vid. Error, and the Vouchee another Writ of Error upon the \$9,90. fame Judgment; and fo the Tenant, and the Tenant byRe- 20 E.3. Firz. N ceit, and all depending at one time. And an Executor or Ad- Error 2. ministrator shall have a Writ of Error upon a Judgment gi- 11 H.4.65. ven against the Testator for Debt or Damages. And so the Heir shall have a Writ of Error to reverse an Outlawry of Felony pronounced against his Father, to restore the blood betwixt him and the Father. And if a man plead in any Action, and the Justices will not allow thereof, and the party makes his Bill upon it, and prayeth that the Justices will

[22.] Seal this Bill of his Acceptance or Plea, and if they do according as is contained in the Statute of west. 2. cap. 3. the party grieved shall have a Writ of Error, and may affign Error upon that Bill so sealed, and also in the Record, or in one of them at his pleasure: but this Bill ought to be sealed by the Juffices before Judgment given by them, and not after, as it appeareth Anno 11 H.4.52,65,92.

Vid. 3 H. 3. the last case. Vid. devant DI L.M.N.

The Successor of an Abbot, Prior, or Parson, or such bo- A dies Corporate, shall have a VVrit of Error of a Judgment given against their Predecessor, of all things which touch the Succession or Corporation. But if a man recover against a Parson or a Bishop Debt or Damages by Judgment or Action Personal, their Executors shall have the VVrit of Error upon that Judgment, and not their Successors, because

18E.3.25. 37 Aff. 24. Errory I. yet Escheat shall not have Error. 3 c Aff. 8. and fo oE.4 14.that a Aranger shall not 6 E.3.7. Fitz.Error 78.

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that matter doth not concern the Corporation. If aman fue forth Execution erroneously against the Re- B the Lord by cognifor upon a Recognifance, the Feoffee of the Recognifor shall have a VVrit of Error. If a man purchase his pardon of an Outlawry, yethe may have a VVrit of Error to reverse the Outlawry. H.18.E.3. But if a man do disclaim in C a Pracipe and reddat of Land, and the Demandant doth recover, the Tenant shall not have a VVrit of Error against his own Disclaimer: but if he plead Non-tenure, and the same be found against him, for which the Demandant recovereth, have Error. the Tenant shall have a VVrit of Error. H.6. E.3. A man condemned shall not affignError in the Process; but in the Original VVrit he may. It is no Error to fuffer one to make Attorney in an Acti-D

21 H. 7.31. on in which he ought not to make any Attorney. S E.z. Error Upon false Judgment given in the Common Pleas in Ire- E. land the VVrit of Error ought to be fued there, and returnable in the King's Bench in Ireland: but upon a Judgment given in the King's Bench in Ireland, the VVrit of Error shall be sued and returned in the Kings Bench in England.

fault of Juflice of the King's Bench in Ireland. And note that it is faid, that there is no Original here, but the same remains there, and so is 37 Aff. 5. Fitz. Aff. 328.

> VVhen the Record cometh in Court by a VVrit of Error, F the Plaintiff shall affign his Error, and shall have a Soire facias before the Record shall be entred; for the same shall not be entred before the parties have day by the Scire facias. And the Process in this VVrit is Alias and Pluries, and up- G

on that Attachment shall be awarded against the Judge who ought to return the Record, to whom the YVrit was direought to return the Record, to whom the VIII we revend 1 Ey ! at in y tay copyrided thoularly 16: faroli 2 /2= 20: far: 2 /4! exchequer kapo it I hall be sted;

Red:and the Pluries may be returned in the Common Pleas. or in the Chancery, if the Pluries issueth to the Justices of the Common Pleas to remove the Record; and if the VVrit issueth to another base Court, the Pluries ought to be returned into the Chancery, or into the same Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himself with his own handsmay put the Record into the Common Pleas without any VVrit of Mittimus thereunto, and that as well as if he had fent a Mittimus with the Record.

### Error in London.

N Ore that if any Erroneous Judgment be given in the A Feme Co-Courts before the Sheriffs of London, the party grieved vert was reshall have a VVrit of Error out of the Chancery directed the Comunto the Sheriffs, to bring that Record before the Major mon Pleas and Aldermen in the Huftings of London, which Huftings to acknow-15 a Courtholden before the Major, &c. And there the Re- ledge a deed cord shall be examined: and if there be Error, they shall re-involled, verse the Record there by the Custom of the said City. And where they if the Sheriff after the Record is removed before the Maior, power to &cc. in the Hustings will award execution upon the Record acxamine her gainst the party, the party against whom the Execution is without a awarded shall have a special VVrit out of the Chancery Writ: Quara directed unto the Sheriffs, that they take sufficient Sureties if Error ; for of the party to fatisfie the King, and also the party, of that it is not adwhich appertaineth unto them, if the Judgment be affir- be Error or med, and that they surcease to do Execution; and if they not. Quare have taken the party in Execution, that they deliver him the usage at out of Prison. And the form of the Writ is such :

this day. So of an Infant

21 E.3. 29. Br. Error 62 vid. 32 H.8. That a Statute nor a Deed inrolled shall not be taken by the Common I aw of an Infant or Feme Covert. Contr.by the Custom of London, per 29H.8.23.& 7E.4.5. Lit.

Rex Majori & Vic. London falut'. Exparte R. &c. nobis eft oftenfum, quod cum fecundum Confretud.in Civitate priedicta,in casu quando aliquie, sive Querens five Defendens, queritur, quod. in Loquela que fuerat in Curia nostra coram Vic. Civitatis predict. Errores aliqui interven' & Record. & proceff. Loquelarum illarum causa erroris intervenientis venire faceret in Hustingo Civitatis pradict', ad Erfores illos corrigendos, Vicecom. Civitatis illius execution. prioris judicii coram eis reddit. faciend, Superfed. debeant, pendentibus in Huftingo Recordis & proceffic. Loquelarum illarum indifeaffaram; ac nos naper ad prosecutio[23]

nem præf.R, suggerentis Errorem in Recordo & processu Loquela, quæ fuit coram vobis præfat. Vic. in Curia nostra Civitatis prædict per Breve nostrum, inter A & prædictum R, de co quod idem R,&c. intervenisse manifestum, vobis præcepimus, quod Recordum & processium ejusdem coram vobis in Hustingo prædict. venire faceretis ad Errorem, si quis fuerit, corrigend'; vos nihilominus Vicecom. (pendente in Hustingo prædict.dicta Loquelà de Errore indiscussa) executionem prioris judicii fieri facitis minus jufte, in ipfius R dispendium non modicum & gravamen: Vobis igitur præcipimus, quod si itá sit, quod idem R.invenerit vobis sufficientem Secur. de satisfac.tam nobis, de eo quod ad nos in hac parte pertinet, quam præfat. A, de arreragiis & dampnis fibi in hac parte adjudicatis, si contigerit primum judicium affirmari, & ad faciendumulterius & recipiend. quod Curia nostra consideraverit in hac parte; tunc execut. prioris judicii faciendo supersedeatis, pendente in Hustingo prædict. Loquela de Errore supradict. Et sidem Roccasione judicii illius captus sit, & in prisona nostra detentus, tune ipsum R à prisona illa, si eccafion.prædict', & non alia, detineatur in eadem, per Securitat. prædict' interim deliberar. faciatis, ut dict. Loquelam suam de Errore profequi poffit. Tefte, &c.

And it appeareth by this Writ, that a manshall have an A Action against any person in London, by Original out of the Chancery directed unto the Sherists of London, and that they shall hold Plea thereof. And a manshall have the like B writ of Error upon a Judgment given in London before the Sherists by Plaint sued there before them, without any Writ original sued, &c. And the Writ of Error shall be directed unto the Maior, and also to the Sherists, although that the Judgment be given in the Sherists Court before them, to remove the Record into the Hustings to reverse it there, if, &c.

And the form of the Writshall be thus:

Rex Majori & Vic.Lond' salutem, &c. Quia in Recordo & C processivac etiam in redditione judicii Loquelæ quæ suit in Curia nostra civitat. prædičt coram vobis præs. Vice-comitibus sine Brevi nostro, secundum Consuetud. ejusaem civitatis, inter A & R, de quadam transgr. eidem A per præs. R. illata, ut dicitur, Error intervenit manisestus, ad grave dampnum ipsius R, sicut ex querela sua accepimus; Nos Errorem (si quis suer.) modo debito corrigi, & partibus præsist. plenam & celerem justitiam sieri volentes in bac parte, Vobis præcipimus, quòd si judic' sinde reddit. sit, sunc Record. & process. Loquelæp. edic' coram vobis in proxim. Husting. nostro ejusa. Civitatis venire, eaque in prælintia partium pred. per vos præs. Vicecomites super boc præmuniend', si interesse voluer', recitari, & diligenter examinari, &

Errorem

Errorem (si quis fuerit) in hac parte modo debit.corrig. & partibus predict' plenam & celerem justic' indé fieri, faciatis, ut de jure & fecund. Consuetud. Civitatis prædict. fuerit faciend'. Tefte, oc.

And the Writ of Superfedeas unto the Sheriff, to cease to do Execution pendant the writ of Error, may be made and contained in the same Writ of Error which is directed unto the Major and Sheriffs to remove the Record into the

And if erroneous Judgment be given in the Huffings in 34 H.6.42. London before the Major and the Sheriffs there, then the par- When Error ty who will fue to reverse the Judgment shall come into the is sued upon ty who will me to reverte the judgment manner to be to perform a Judgment Chancery, and there fue a Committion, directed to perform and before the to examine the Record, and Process, and the Errors, and Maior, it thereupon to do Right. And the Commission shall be thus: shall be at

S. Martins,

and then the Major and Aldermen shall have 40 days to be advised of their Records, and the Recorder shall record the same, Ore tenus.

Rex dilectis, &c.R & S, salutem. Ex parte B accepimus, quod in Recordo & processu, ac invedditione judicii Loquelæ quæ fuit coram Majore & Vic. Lond.in Hustingo nostro ibidem fine Brevi nostro, int. C & prad. B de quadam transgr', &c. illata, ut dicitur, Error intervenit manifestus: Nos, in defectu eorundem Majoris & Vicecomitum, volentes Errorem illum (fi quis fuer') debito modocorrigi, & partibus inde fieri Justitia complementum, assignamus vos fustic.nostros, una cumiis quos associavim, ad præd. Record. & processus examinand & Errorem ( si quem in eis. aut in redditione judic. Loquela prad. inveniri contigerit) corrigend', & ad plenam & celerem Justic.inde partibus faciend'secundum Consuetud. Civitatis prad'. Et ideo vobis mandamus, quod ad certum diem, quem ad hoc provideritis, usque sanct. Mar tin magnum Lond.accedatis, & in defectu præd. Majoris et Vic. præmissa fac.in forma præd. factur, &cc. secundum legem et cons. regni nostri, et Civitatis præd'; salvis, &c. Mandamus, &c. eisdem Majori et Vic', quod ad cer tum diem, quem eisscirifac', Recordet process. Loquelæ præd', cum omnibus ea tangentibus, et partes prad', coram vobis ad locum prad.venire fac'. In cujus, &c. Tefte,&c.

And upon this Commission the Justices shall award a Precept unto the Major and Sheriffs, to fend the Records and Process before them at a certain day, and to warn the parties to be before the Justices the same day, &c. And the King shall send another Writ unto the Major and Sheriffs, to have the Record and Process refore the said Justices at the day

affigned by the Justices by their Precept made unto the Maior and Sheriffs. And upon this Commission the King may make association, and another Writ Si non omness, directed unto the Justices to proceed, although that some of them do not come, as he shall do in an Assiste, or in Oyer and Terminer, Sec.

And a man shall have a Commission to examine the Er-G rors, and Judgment given in the Hustings in the time of another King, and in the time of another Maior, and other Sherists; and the form of the Commission is such.

Rex dilectis,&c. Quiaex parte B accepimus, quod in Recordo et processu.&c. [usque ib. justitiæ complementum ] assignavimus vostresset duos vestrum Justiciar.nostr', ad Recordum et processum Loquela praditt', in prasentia nunc Majoris et Vic. Civitatis prædict', per vos super hoc præmuniend', si interesse voluerint, ad Ecclesiam santli Martini magni Lond. supervidendet examinand',&c. ut supra. usque ib. Civitat.predict'. Lt ideo vobis mandamus, quod ad certum diem,&c. provideritis, ufque dictam Ecclesiam sanéti Martini magni London. accedatis, et pramissa omnia et singula fac.et explicet.in forma predict' factur',&c. secundum Legemet Consuetudinem Civitatis predict'; salvis, &c. Mandamusetiam eisdem nunc Majori et Vicecom', quod ad certum diem quem vos,&c. eis sciri fac. Record' et processum Loquele pred', cum omnibus eatangentibus, que penes ipsos resident, ut dicitur. coram vobis,&c. ad locum predict' venire fac'; prefatisque Vic. quod ipfi scire fac. pref. B, quod tunc sit ibi, Error', fi quis in Recordo et praceffupredict', &c. ut fupra in pramis', &c. Tefte, &c.

And upon this Commission the King shall send another Writ unto the Major and Sheriffs of London, to fend the Record and Process before the said Justices, &c. And the Writ in the beginning thereof shall rehearse the effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine,&c. and to.do Juffice thereupon: and then he shall fay in the end of the Writ, Et ideo vobis precipimus, quod ad certum diem, quem eidem R.F.& S, vel duo corum, vobis feiri fecerint, Recordet process. Loquela predict', cum omnibus ea tangentibus, que penes vos resident, ut dicitur, coram eis vel duobus corum ad locum predict.venire jac', cofque prefat. Vic. feire fac. pref. A, quod tunc fit ibi, Errorem illum (fi quem in Recordo et proceff, predict, aut in redditione judic. Loquele predict. intervenire contigerit) auditur', et ulterius factur et receptur. quod Cuvia nostra consideravit in has parte. Et habeat', &c.

And if a man hath Judgment given for him in London be- A
fore

[24]

fore the Sheriffs in their Courts, or before the Maior and Sheriffs in the Huftings of London, and the Defendant, to delay the execution of the Judgment, fueth a Writ of Error to remove the Record before the Maior, &c. and after the party Defendant who fued that Writ of Error will by fubtil means convey his goods out of the City, or otherwise waste them, to the intent that the Plainant may not have Execution of his goods; then the Plainant who had Judgment to recover shall have a special Writ directed unto the Maior and Sheriffs, that they provide that the goods amounting unto the value of what is recovered be safely kept to satisfie the Plaintiff, if the Judgment be affirmed for him; so that Execution may be done of the first Judgment upon the same goods.

And if Judgment be given before the Sheriffs of London for the Plaintiff, and the Defendant fueth a Writ of Error, and removeth the fame before the Maior and Sheriffs in the Huftings, and when he hath removed it by a Writ of Error, if he will proceed no farther upon the Writ, &c. then the Plainant who recovered shall have a special Writ unto he Maior and Sheriffs, that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he shall have an Alias, and a Pluries, vel causam nobis significes in the Pluries, is will not proceed, &c. And this Writ was devised by Parning then Lord Chancellor, and by him diligently examined, as it appearet by the Register.

And if Falie Judgment be given in Heland, the party may fue a Writ of Error in the Kings Bench in England; and

the Writ shall be such:

Rex dilect et fidel suo A, Justic suo Hibern', salutem. Quia in Recordo et process', &c. Error, &c. ad grave dampnum ipsius B, secut ex gravi querela sua accepimus: Nos, &c. quod Record. et process'. Loquel, pred', cum omnibus ea tangentibus, nobis suo siglio vestro distinctò et apertè mittatis, et hoc Breve, ità quod es habeamus tali die, &c. prout, inspect. Record et process pred', ulterius indè sieri jaciamus quod de jure fuerit faciend. Et scire fac. pref. S, quod tune sit ivi, ad procedend in Loquela pred', et ad faciend et recipiend. quod Curia nostra consideravirit in memissione.

## Error.

R Ex dilecto & fideli suo I de T salutem. Quia in Recordo D & processu, ac in redditione judicii Loquelæ quæ suit coram vobis & sociis vestris Justiciar. nostris de Banco per Breve nostrum, inter A & B, de Record. & processu Affisa Novæ diffeifinæ, quæ inter eos fumm. fuit & capta apud S, coram dilectis & fidelibus nostris I de I & fociis suis Justic', &c. affign', de Tenementis in W, que quidem Recordum & proceff. coram vobis certis de causis venire fecimus, Error intervenit manifestus, ad grave dampnum ipsius A, sicut ex querela sua accepimus: Nos, Errorem (fi quis fuerit) in bac parte modo debito corrigi, & partibus pradict. Justitiam inde fieri volentes, prout decet, Vobis mandamus, quod si judic. inde redd. sit, tunc tam Record. & process Loquela prad. coram vobis fic habit, quam etiam Record. & process. Assifæ præd. coram vobis missa; cum omnibus ea tangent', nobis sub sigill. vestro, oc. itá quod ea habeamus, oc. ut his infectis, oc.

And this Writ of Error lieth where the Affise passeth in E the County before the Justices of Assise, and afterward it is removed into the Common Pleas, and there is Judgment given: Now the party may fue this Writ of Error if there be any Error in the matter; and upon that he may have an Alias and a Pluries, if the Justices will not rectifie the Re-

cord,&c.

And if the Justices of that Bench or other Justices upon A the Writ of Error will not certifie all the Record, then the party who fueth the Writ of Error may alledge diminution of the Record, and pray a Writ unto the Justices who certified before the Record, to certifie all the Record; and the Writ shall be such:

Rex dilecto & fideli suo W de T salut'. Cum nos nuper ad B profecutionem I de H, nobis suggerentis, in Recordo & processia, ac etiam in redditione judicii Loquela que fuit coram vobis & sociis vestris Justic. nostris de Banco per Breve nostrum, inter W de T Petentem & I de R Tenentem, de xv. mesagiis cum pertinen. in S, Errorem intervenisse manifestum, Vobis mandaverimus, quod fi judic. inde redditum effet, tunc Record. & processum Loquelæ præd', cum omnib. ea tangentibus, nobis sub sigillo vestro distincte & apte mitteretis, & Breve nostrum quod vobis inde venit, ita quod ea haberemus in Crastin. santti Martini proxim. præterit', ubicunque tunc essemus in Anglia: Ac jamex parte prad. I de H nobis eft oftenfum, quod licet vos prarextu Brevis noftri prad. Record. & processum prad. in aliqua

fui parte coram nobis ad dictum Crastin. miseritis, aliqua tamen corund. Record. & proceff. necnon quadam alia ea tangentia adbuc restant coram vobis mittend, in ipfius I de H dampnum non modicum & gravamen: Ideo vobis mandamus, quod, si ita est, tunc residuum Record. & process. præd', necnon omnia alia ea tangentia, que ut pred. est restans coram vobis mittenda, nobis sub sigillo vestro distincte & aperte mittatis, & boc Breve; ita quod ea habeamus, &c. ut ulteriùs in præmiff. &c.

# Dedimus potestatem de Attornato faciendo.

C TT feemeth that before the Statutes which gave power unto a man to make an Attorney, the Justices would not fuffer that the Plaintiff or the Defendant, or the Demandant or the Tenant should make Attorney in any Action. Suit or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, because the words of the Writ do command the Defendant for to appear, &c. and

that was always taken to be in proper person.

The form of Entry in every Action for the Plaintiff or Demandant is; Et præd. Quer. obtulit se iiij. die, &c. & prædict. Def. non venit; ideo præceptum eft Vic', quod, &c. by which it is taken that the Plaintiff was to appear in proper person. But now by the Statutes he may make Attorney in a Court-Baron, or other Courts; and may make Attorney for Suit Personal at the Hundred or other Court-Baron; but for Suit Real at the Leet, or at the Sheriffs Torn, he cannot do it by Attorney, but he ought to do the same in proper person. But it seemeth that the King by his Prerogative, and before the Statutes, might give warrant unto a man to make Attorney in every Action or Suit, and that as well unto the Demandant or Tenant, as unto the Plaintiff or Br. Attorney Defendant; and that he may direct his Writs or Letters unto the Judges of Courts, commanding them to admit and receive fuch persons by their Attorney, and that the Judges are bound to do the same. And it seemeth one cause is, because it shall not be Error, if the Judge do admit any Plaintiff or Defendant to make Attorney in any Suit or Action in which by the Law he ought not to make Attorney : quod vide in Title of Error H.36 E.3. and Title Attorney T.37 H.6.

And if Tenant for life be impleaded in a Pracipe quod 37 H.6.27. reddat, he in the Reversion may pray to be received to defend his right upon the Default of the Tenant, or upon his faint Pleading, and there he cannot pray to be received by Br. Attorney his Attorney. But if he bring a Writ unto the Justices out 82.

#### Dedimus potestatem de Attornato faciendo. 56

of the Chancery, teftifying that he hath made Attorney there, and rehearle the cause wherefore, that is to say, because he is fick, or other reasonable cause, and commanding them to receive fuch person by Attorney for him in the Reversion; the Court ought and is bound to receive him by his Attorney. And it is not material whether the cause put in the Writ be true or not, for it is not traverfable.&c.

And the King by his Letters Patents may licence a man E to make a general Attorney in omnibus placitis motis & movendis, & in quibufounque Cur': and by his Letters Patents he may express who shall be Attorney, &c. or may grant to make Attorney whom or who he will, without naming any Attorney by his special name.

And the King by his Writ may fend to any person to receive Attorney for another, fuch person generally as the other will name, or fuch persons specially; and that may be as well for the Demandant or Plaintiff, as for the Defendant

or Tenant.

Register 9 Br. Attorney 84. that is intended Court; for it doth not extend to bafe Courts, as Court-Baron,&c.

Vide 32 H.

26.

6.22.

After 27.9.

And the King may give authority unto one person to receive Attorney for another in all Pleas, and in all Courts, for two or three years. And the King may grant a Dedimus of the Kings potestatem to receive Attorney for another for a special cause recited in the Writ, because he is languishing, or lame, or decrepit,&c. or such other like special cause. Or he may grant a Dedimus potestatem in the generalty, to receive Attorney for another in all Pleas, without expresling any cause in certain wherefore he doth so.

> And also it appeareth by the Register, that the King by E his Letters Patents may grant unto the Prior of St. Johns of Ferufalem, that he may make two of his Friers, and name them, &c. in his place, which is in the place of a Proctor, that the two Friers shall make Attorney for the Prior in every action which is pendant, or to be brought against him in any Court,&c. and for to challenge his liberties, and for to defend them.

> And also the King by his Letters Patents may grant unto A an Abbot, for the devotion that he oweth to the House, that he may make a general Attorney for all Pleas, and in all Courts; and the faid Abbot may remove him and put others in his room as often as it shall seem good and needful for him so to do: and so by this it doth appear that the King may grant unto all his Subjects to make Attorneys in the same manner, without putting or shewing any cause in the Letters Patents.

And it appeareth by the Register, that the King may B grant

grant the fame as well by Letters Patents under his Privy

Seal, as by Letters Patents under his Great Seal.

And when the King makes a general Grant unto an Abbot, or unto any other, to make such general Attorneys, then it seems the Abbot shall come into the Chancery, or shall send his Deed under his Seal unto the Chancellor, witnessing that he hath made such and such persons his Attorneys, &c. And thereupon the Chancellor shall make Letters Patents unto the Abbot, testifying that he hath made such and such persons his Attorneys in all Pleas and Courts, and upon these Letters Patents shewed unto the Court, the Judge ought to admit and receive those persons for Attorneys for the party; and these Letters Patents shall be entred upon Record in the Chancery.

And the King may fend his Writ unto the Justices of the Common Pleas, or unto the Justices in Eyre, or other Justices whatsoever, testifying that such a one hath made his general Attorney in all Pleas and Quarrels moved against him or by him, and also to challenge his Franchises, or to desend his Franchises, commanding the Justices by the Writ

that they receive him for Attorney,&c.

There is another Writ also in the Register, That the Ring by his Writ shall command his Justices in Eyre, that they admit and receive the claim of such a one to certain liberties which he shall make and claim before them by his Attorney, because himself cannot be personally before them at the day.

There is another form of Writ to the Justices, that they admit such a one by his Attorney, whom the said party shall make his Attorney by Letters Patents under his Seal.

And a man may make his Attorney before the Justices, without making an Attorney in Chancery, or without suing any Writ unto the Justices, commanding them to admit any Attorney for the party Plaintiff or Defendant; as the common course is at this day for an Attorney for every party to appear in every manner of Action, that they can appear by Attorny, and put in their Warrants without any such Writs, if not that they be in Writs of Entry in the Post, or Writ which is by Covin between the parties, or a Writ of Right: then the Justices in discretion do not admit any man to appear as Attorney for the party Defendant, unless the Desendant do before some Justice consess him to be his Attorney, and that the Justices do record the Warrant, or otherwise that he bring a Writ out of the Chancery, testifying that he hash there made Attor-

ney, commanding them for to receive him for his Attor-

But there are divers Cases in which the Justices will not E admit the Defendant by Attorney; as if he came in by Cepi Corpus, they will not admit him by Attorney until he hath pleaded some Plea, and then in discretion they use to suffer the Defendant to make Attorney. But if the Defendant

42 E.3.31. 47 E.3.21. 21 E.4. 77.

come by Cepi Corpus upon the Exigent, the Juffices will not admit him to make Attorney, but give him day by Bail from Term to Term until the matter be determined; and that feems to be at their discretion for his contumacy, for in that case if they do admit him to make Attorney, and to go

33 H.6. 28. Vid. 9 E.4. 2 H.4.23. 3 H.42. 41 E.3.29.

without Bail, it is no Error; as it feemeth unto me. At the Grand or Petit Cape returned, the Tenant may F appear by Attorney, and tender to wage his Law, and take day to wage the same; at which day he ought to appear and make his Law.

37 H.6.27.

And a man shall not make an Attorney against the King G

in any Action fued by the King.

37 H.6.27.

Upon a Rescous returned by the Sheriff, and an Attach- H ment awarded upon it against him, the Desendant shall not make Attorney; but upon his appearance shall be presently committed unto the Fleet. But if the King fend a Privy Seal unto them, commanding them that they admit Attorney for him, the Court ought to receive the Attorney without appearance in proper person.

5 H.7.7. one cannot affign Errors

And a man shall sue a Writ of Error by Attorney if he I be not in Ward. In an Appeal the Plaintiff shall make Attorney against K

by Attorncy. 1 H.7.27. 7 H.4.2.

the Abettors, if he fue against them a Distringas, oc. In a Quem redditum reddit the Defendant shall not make L Attorney but with affent of the parties.

1 H.7.27. 32 H.6.22. 39 E.3.26.

X Ina Quid juris clamat, or Per quæ servitia, after a Plea pleaded the Defendant shall make Attorney. It seemeth after 147. a. likewise in a Quemredditum reddit.

21 E.3.48. Hill.br.Attorney 36.

9 H.7.11.

27.

In a Pramunire the Defendant shall not make Attorney M without a special Writ directed to the Justices.

After a Capias ad computandum awarded, the Defendant N is H.7.9. 32 H.6.22.

9 E.4.2. ac'. shall not make Attorney. A man may demand Conusans of Pleas by Attorney. The Plaintiff after appearance shall make Attorney in P.

3 H.7. cap. an Appeal by the Statute of Henry the 7. r. Raftal Murder 2.

He who pleads Misnosmer shall not make Attorney; quod A vide P.41 E.3. & M.45 E.3. Fitz. Attorney 52.

In a Scire facias upon a Charter of Pardon, the Plaintiff B 27 H.8.11. Infrap: 327: 3200.

59

Newton ac.

21 H.7.39.

in the Scire facias shall not make Attorney, but with the 41 E.3. Atassembly a few may.

A Feme Covert may be Attorney for her Husband.
At the Sequatur subsuo periculo, the Vouchee shall not enter

11 H.4.28.

D At the Sequatur subsuo periculo, the Vouchee Inali not enter into the Warranty by Attorney.

E In Attaint the Petit Jury shall make no Attorney.

The Defendant shall not make an Attorney in Maihem.

Aftion by Gardian, or by prochein amy, but ought to be al. 33 H.6.18.

waies in proper person. P 33 H.6. fol. 20.

An Infant shall sue by proche any; but if the Infant be 29 Aff. 67. Defendant in any Action, he shall make his defence by Gardian, and not by prochein any. And the Court shall assign 3 H.6.17. the Gardian for the Infant Desendant, and that is commonly Markham. one of the Officers of the Court. 40 E.3. fol. 16.

An Infant fued a Writ of waste against his Gardian, and

made Attorney in that Action, 48 E.3.10.

An Infant was received to fue an Action of Debt by his 34H.6.32.

Gardian, 16 H.7.5.

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I And a man shall not answer as Gardian unto an Infant proper perwho is Plaintist or Desendant without a Warrant; but as son by one prochein amy to an Infant he shall sue an Action without a of full age. Warrant.

The Infant shall not remove his Gardian, nor disavow an Action sued for him in prochein amy. Anno 43 E.3. Lib. Aff

O Anno 27 E, 3. Lib. A [ .53.

And the King by his Letters Patentsmay make a general Gardian for an Infant to answer for him in all Actions or Suits brought or to be brought in all manner of Courts. Or may make two or three Gardians joyntly and severally to answer for him, or to bring any Action for him; and at the request of the Infant may grant by the said Letters Patents, that the said Gardians may make other Gardians joyntly or severally in their places, to sue or defend for the same Infant in all Actions and Suits which are brought or fued, or shall be brought or sued after.

And the Infant shall have a Writ in the Chancery for to remove his Gardian directed unto the Justices, and for to receive another, &c. and the Court at their discretion may remove the Gardian, and appoint another Gardian.

Andree in the Register after the Writ of Protection cum An Infant clausula Nolumus, Writs directed unto the Bailies of Hund. appeared to receive and admit such persons by Attorney in Court by Gardian, be in a personal Action, but Quere is he can sue personal Action by prochem any. 8 13.6.8. Ashou.

# 60 Dedimus potestatem de Attornato faciendo.

which the party will make under his Seal, or otherwife: and also Writs of Dedimus potestatem to remove Attorneys made, and to put others in their places, or to remove any of the Attorneys, and to put another in his place. And if a man o make Attorneys in Chancery to answer and defend in other Courts, he may come in Chancery and remove him, and make others his Attorneys: and thereupon he shall have a Writunto the Justices of the Court where the Attorney is, testifying that he hath removed him, and made another his Attorney, commanding them for to receive him, &c.

There is a Dedimus potestatem granted in the Register to P receive an Attorney for him who is Vouchec, because he is received for the Default of Tenant for life: and a Writ directed unto the Justices to receive an Attorney for a Woman, who prayeth to be received for the Default of her Husband, before she be received. And another Writ unto 0 the Justices, to receive Attorney for one Desendant, and

Gardian for another Desendant.

In Quale just awarded, where a Scire facias shall be award-R edagainst the Lord's mediate and immediate, they shall have a Writ directed to other persons to receive Attorney for them to appear to this Quale just to defend their right; and upon certificate thereof in the Chancery he shall have a Writ to the Justices before whom the Quale just is to be tried, to admit him who is received Attorney, and so returned in the Chancery. For Attorney for the Lords in that

before 25. e. turned in the Chancery, for Attorney for the Lords in that

In Detinue, or Ward, v here shall be Enterpleading, they S ought to appear in proper personand enterplead, &c. And yet upon reasonable cause he may make Attorney in the Chancery, and shall have a Writ unto the Justices to receive him for his Attorney, and rehearse the cause wherefore; yet it seemeth it is not material whether the cause be true or no.

Also there is another Writ in the Register directed unto T the Justices for him in the Reversion, where Tenant for life is impleaded, commanding them for to admit Attorney for him in the Reversion, if the Tenant for life make Default, as he conceiveth he will; and testifie in the same Writ, that he in the Reversion hath made such and such his Attorneys joyntly and severally, commanding the Justices to receive them for Attorneys, because that he in the Reversion hath such an infirmity that he cannot pray to be received, in proper person. And the like Writ for a Feme Covert, who hath a Reversion, and the Tenant for life is impleaded, and

3 H.4.18. Feme proceeded to be received and plead, which was

not by Attorney.
21 H.6.48.
cont.

fhe

fhe conceiveth that her Husband will not pray to be received,&c. But in the Writ it shall be mentioned that the Feme is decrepit, or hath some other infirmity, that she cannot conveniently come to be received in proper person.

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There is another manner of Writ for the Sheriff, or for the Escheator, to cause the Barons of the Exchequer to admit Attorneys for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognifance to do the same in proper person. And the Writ is such:

Rex Thefaurario & Baronibus suis de Scacc. salut. Quia dilestus nobis de B, Vic. noster Suff. circa quæd. ardua negotia nostra, de quibus issum specialit. oneravimus, in tantum est intendens, quod coram vobis ad Scaccar. nostrum ad instans crastin. S.Mich', vel ad instans Oct. Pasch. proxim. sutur', ad Prossim suum tunc ibidem, prout moris est, personalit. interesse non potest; Vobis mandamus, quod R & I cleric', quos idem Vic. ad Prossim suum præd. coram vobis ad dictum Crast. faciend. coram nobis in Canc. nostra loco suo attornavit, vel alterum ipsorum, si ambo interesse non possint, loco ipsius Vic. ad bac recipiat. bûc vic. de gratia nostra speciali, ipsum Vic. propter abs. suum ad diem illum, vel ad Oct. præd', non molestant. in aliquo, seu gravant'. Teste, &c.

And the Escheator may have the like Writ for his profers to make Attorney. But it seemeth this is not a Writ of course, but upon a special commandment directed unto the Chancellour by the King to make such Writ, &c. And the King may send a Writ unto the Treasurer and Barons of the Exchequer, to respit the Accompt of the Sheriff, and of the Escheator; and the Writ shall be such:

Rex Thefaur. & Baron', &c. falut'. Quia dilectus nobis W de H, Vic. noster Wiltes', circa quedam, &c. ut suprà, est intendens, quòd coram vobis ad Scaccar. nostrum ad instans Crast. S. Mich. proxim. futur', ad Compotum suum de exitibus Compred', cenire nos potest; dedimus ei respect. de Compoto supred. reddendo usque ad Ottabis S. Hilar. proxim. futur': Et ideo vobis mandamus, quòd ipsum Vic. respectum illum interim babase permittatis. Teste, &c.

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## Protection.

Roteltions are in divers forms, and of divers effects, and E the King may grant them for divers causes. And there are four manner of Protections with the clause Volumus. One is a Protection called, Quia profecturus. And another Protection, Quia moratur. And the third is a Protection which the King by his Prerogative may grant; and the same is where a man is Debtor unto the King, the King may grant unto him that he shall not be fued nor attached, but taketh him into protection until he hath paid the King his Debt. But now by the Statute of 25 E. 3.19. it is ordained, That the Creditor shall have an Action against the Kings Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debt which the King's Debtor owed unto the King; and then he shall have Judgment and Execution against the King's Debt, or for both Debts, &c.

There is another Protection cum claufula volumus: and C that is, when the King fendeth a man in his fervice into the wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept prisoner; he shall have a special Protection reciting the whole matter; and in the end of the same Protection shall be such clause : Prasentibus D minime valituris post deliberation. præd. R à pris. præd', si conting. infum iterum liberari ab eadem. And the form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: for if the Protection be to endure for two or three years, the Justices will not allow the same; and therefore the form of the Protection at this day is to endure for one year and a day after the date thereof, and then to fue forth a new Protection if need be. And a Protection may be cast for the E party by a ftranger as well as by the party himfelf.

39 H.6.39. .

And Protection Quia projecturus shall not be allowed if E it be presented hanging the Plea, if he benot in a voyage Royal: and a voyage Royal is, where the King goeth to the War, or his Lieutenant, of his Deputy-Lieutenant, and not otherwise.

And the Plaintiff cannot cast a Protection, for the Pro-G tection is always for the Desendant, and shall be cast for him; if it be not in special cases, where the Plaintiff becometh Desendant. But when a Protection shall be allowed;

and

and when not, appeareth more plainly in the Title of Protettion in the great Abridgment of the years, and therefore it is not needful to shew it here.

And by the Register a man shall be by Protection when he ftayeth Super Salva custodia West-marchia Angl. versus Scotiam. Yet Anno 22 E.4. fuch Protection was disallowed. But I am of opinion with the Register.

A Protection Quia moratur upon the Sea was disallowed. Trin.36.H.6. because that the Sea cannot stay, and by con-

fequence he cannot stay upon the Sea.

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And a Protection shall be allowed in a Court of Ancient Demesn, or in other Court of Record, as London, &c. And 7 H.6.2 1. when the Plea is removed, the Protection may be allowed : cont. if they when the Piea is removed, the Floreston half of the put the Plead. vide and a Protection allowed for one Defendant doth put the Plea in Tref. Plea without day for all the reft; if not that it be in special 15 E.4.27. cases, as in Trespass, where they plead several Pleas, and he 4H.4.4. shall sue several Venire facias upon the Issue joyned against 3 H.4.5. them,&c.

And a Protection shall be sometimes disallowed for variance betwixt the Writand the Protection: But fee that in

the Title Protection in the Abridgments.

Protection shall be allowed for an Infant; but there are divers opinions amongst the Justices, if it shall be allowed for a Feme Covert.

And how a Protection shall be made void, see Title Protestion, and in the Title of Repeal in the Abridgments.

There is another manner of Protection, cum claufula Nolumus, as appeareth in the Register: and that is, where an Abbot, or a Prior, or other Spiritual person be in fear or doubt, that his goods, or Chattels, or his Cattel shall be taken by the King's Officers for the King's fervice; they may purchase this manner of Protection cum claufula Nolumus. B And by the Register appeareth, that the Kingmay grant unto a Secular man this Writas well as unto a Spiritual man; and if he do so, the same is good,&c.

And a man may excuse his Default at the Grand Cape or

Petty Cape by casting of a Protection.

And if a man be effoigned of the King's fervice, the Plaintiff may have a special Writ directed unto the Justices to difallow of the Essoin, if he be not in the King's service,

commanding them for to proceed.&c.

And it appeareth by the Register, fol. 280. that there are divers manners of forms of Protections: where a man feareth to travel the Country with his merchandifes, or to colleft the Alms for the Poor of an Hospital, or of the Church,

[29.]

then they may purchase Letters Patents of the King's Protection, commanding the King's Subjects for to defend them, and to maintain, aid, and affift them: and the formis such:

Rex omnibus Ballivis & fidelibus suis ad quos, &c. salut'. E Supplic. nobis A, ut cum ipse diversa negotia sua in diversis Cur. noftris, & alibi infra regnum noftr. Anglia, profequit', ac idem A occasione prosecutionis hujusmodi timeat tam sibi quam hominibus & fervien. suis, in personis & rebus suis, per quosdam emulos fuos, & corum procuration', dampn', or thus, dampn.de corpore suo & jacturam de bonis suis de facili, &c. & periculum de facili posse evenire, volumus securitati sua in hac parte prospicere gratiose; Nos, pacem & tranquillitatem ubicunque in regno nostro conservare volentes, suscipimus ipsum A, & negotia fua præd. in dictis Cur. noftris, & alibi infra regnum nostrum Angliæ prosequend', ibidem morando, & exinde ad propria redeund', necnon homines & fervien. suos, ac res & bon. fua quacunque in protection. & defension. nostras speciales : Et ideo vebis mandamus, quod ipfum A, dicta negotia fua in Cur. nostris, & alibi infra regnum nostrum pred. (ut præmittitur) prosequendo, ibidem morando, & exinde ad propria reddend'. necnon homines & fervien. Suos, acres & bona fua quecunque, manuteneatis, proteg', & defendatis, non inferentes eis, feu, quantum in vobis eff, ab aliis inferr. permittentis injuriam, molestiam, dampnum, violentiam, impedimentum aliquod, seu gravamen. Et fi quod eis forisfactum feu injuriat. fuerit,id eis fine dilatione fac. emendar': dum tamen idem A quicquam quod in nostri seu populi nostri prajudicium, aut contra Ordination. per Dominum E, nuper Regem Anglia, avum nofirum, & Confil. fuum nuper inde fact', enervation. cedere poterit, non prosequat', aut attemptet, vel attemptare seu prosegui presumat ullo modo. cujus reitestimonium, &c.

And these Letters may be made and directed to Sheriffs, F Admirals, Malors, and all other Officers,&c. And thereby itappeareth that they ought to see and provide, that such persons who have purchated such Letters have by reasonof such Letters favour and right done unto them, because it appeareth the King's will so to be,&c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or High-ways; and the like for Spiritual persons; and the like Protection for Merchants strangers, which go into the Country to gather their debrs, or to sue for them,&c. There is another form of Protection, which

is fuch :

Rex universis & singulis Vie', Escaet', Majoribus, Ballivis, G Mint-

Ministris, ac omnibus fidelibus ligeis nostris quibuscunque, tam Communibus Vill. nostræ de Southwark, quam aliis infra Libertates & extra, prasentes Literas nostras visuris vel audituris, falutem. Sciatis, quad suscepimus in protect. nostram fetialem TW, ac homines & fervien. Suos, maneria, terras, & tenementa, bona & possessiones suas in London, Southwark, Hathm', & H, in Com. Surr', ac in S, C, & D, in Com. K existent', necnon hæc scripta & munimenta sua quæcunque. Et ideo vobis mandamus, quod ipfum T W, ac homines fervientes, maneria, terras, tenementa, bona, poffessiones, literas, scripta, O munimenta prad. manuten', protegatis, & defendatis, non inferentes eis, aut eorum alicui inferr, permittentes injur', molestiam, damnum, violentiam, vastum, destruct, seu domorum vel aliorum bonorum & catall. suor. incendium, seu aliud impediment. aliquod vel gravamen: Et bæc in fide, dilectione & ligeantia quibus nobis tenemeni, sub gravi forisfact. nostra, nullatenus omittatis, nec aliquis vestrum omittat. In cujus, &c. per unum ann. dur'. Tefte, &c.

And another Protection for the Prior of S. Johns, and for his Protectors, &c. And those are of divers forms, as appeareth in the Title of Protection in the Register, and therefore see them there. But these Protections are by the King granted of grace: for every man who is a loyal fubject is in the Kings Protection; but these Protections are granted to move and excite the Kings subjects to aid and comfort those who have such Protections, in their business which they have to do in the Countries for the causes men-A tioned in the Protections. And it appeareth by the Register, that every Spiritual person may sue forth a Protection for him and for his goods, and for their Fermors of their Lands for their goods, that they shall not be taken by the King's Purveyors, nor their Carriages or Chattels taken by other the Kings Officers. And it appeareth by the same, Protection, that King Edward in the 14. of his reign by special Statute did grant such priviledge to the Clergy, whon he took into his Protection with their goods and Carriages. And they may have a special Commission directed unto

certain persons to arrest such Purveyors or Officers, and to send them before the Kings Council, there to answer their missionings in such case. And for the same Protection see the

Register, fol.289.

[30.]

4 E.3.18.

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in tail.

Brief 713.

# Writ de Droit de Advomfon.

Writ of Right of Advowson lieth only for him who B hathan Estate in the Advowson to him and his Heirs in Fee-simple, or right of Estate to him and his Heirs in Fee-fimple in the Advowson; and if he be disturbed to present, then he shall have the Writ. But if a man have an & Br. Estates Advowson to him and the Heirs of his body begotten, and 65. Tenant for default of such issue, &c. the Remainder unto him and his Heirs in Fee-fimple; if he be disturbed, he shall not brought this have this Writ, but a Quare impedit, because he hath not Title to the Advowson but in tail, and he ought to maintain but an Estate the Action by that Title that he claimeth the possession of the Advowson, and that is of an Estate in tail. And in this 24 Aff.4.Br. Writhe ought to count of his own possession, or of the possession of his Ancestor, otherwise the Writ doth not lie, and he ought to alledge Esplees in the Parson; as in taking Darrein preof gross Tithes, Oblations, and Obventions unto the value of,&c. And the Tenant shall come and make defence, and C. may joyn the Mise by Battel, or Grand Assise, &c. And see the form of the Count, and the Defence, and of joyning the Mise, in the Book of Entries, fol. 90.

And a man who claimeth to have Fee-fimple in an Ad- D vowson may have a Writ de Recto de Advocatione medietat. 39 H.6.20.a. Ecclefie, vel tertie partis , vel quarte partis Ecclefie, &c.

And when a Parson sueth in the Spiritual Court for E Tithes, which do amount unto the fourth part of the Advowson, against the Parson of another Parish, then that Parfon who is fued in the Spiritual Court may purchase a Writ which is called indicavit; which Writ is a Prohibition, and shall be directed as well unto the Judge of the Court as unto the party, that they do not proceed in the Plea, &c. And then the Patron of that Parlon who is so prohibited by the Indicavit, may have and fue a Writ of Right of the Advowson of Dismes; and the form of the Writis such:

Pracipe A, quod reddat B Advocation. Decimarum tertia partis Ecclesia de S, vel quarta partis, vel medietat' Ecclesia,

CO-C.

And this Writ is founded upon the Statute of West. 2. c. e in the end of the Statute, and doth not lie of a less part of the Tithes than of the fourth part of the Church But it icemeth that at the Common Law before the Statute, a Writ of Droit des Defines lay and was maintainable; as, Pracipe and reldat Advecationem Decimarum quinte partis, vel jext.e

fexte partis Ecclefie, &c. And that by the Statute of 18 E.3. which is : Whereas Writs of Scire facias have been granted to warn Prelates and other Religious Clerks to an faer Difmes in our Chancery, and to shew if they have any thing, or can any thing fay, wherefore fuch Difmes ought not to be restored to the faid Demandants, and to answer as well to us as to the parties of such Dismes; that such Writs from henceforth be not granted, and the Process hanging upon such Writs be annulled and repealed, and that the parties be dismissed from the Secular Judges of fuch manner of Pleas: Saving to us our right, such as we and our Ancestours have had, and were wont to have of reason.

And by that appeareth, that before that Statute the right of Tithes was determined in the King's Temporal Court: but the Statute now hath altered the Law. And if a Parson be sued in the Spiritual Court for the fourth part of the Tithes, for which he purchases Indicavit, &c. by which the Judges do furcease; if the Patron of the Parson which fueth in the Spiritual Court hath but an Estate in tail in the Patronage, or for term of life, he shall not have a Writ of Droit des Dismes, nor other remedy by the Common Law, to try the right of the Tithes, for the feebleness of the Estate: But if two be seised of an Advowson, and unto the Heirs of one of them, they shall joyn in a Writ of

Right of Advowson for the advantage of him who hath the 31 H.6.14. Fee-fimple.

And also a man shall not have a Writ of Indicavit before 12 E.4.13 b. that the party hath libelled against him in the Spiritual Court. And he ought to flew the Copy of the Libel before the Indicavit be granted: and the Indicavit doth not lie after Judgment given in the Spiritual Court.

And a Writ of Right de Advocatione Decimarum & Cblationum quarta partis Ecclesia, lieth as well as, de Advoca-

tione Decimarum quarta partis Ecclesia tantum.

If one be Parson impersonee, and another be Vicar in the same Church, and one of them be impleaded of the fourth part of the Tithes of the Parsonage, and the other impleaded of the fourth part of the Tithes of the Vicarage, they shall have several Writs of Indicavit, and their Patrons may have several Writs of Right of Advowson of the Tithes,&c.

And it appeareth in 13 H. 6. by the opinion of Fortesche, that before the Writ of Indicavit lay of Tithes fued in the Spiritual Court, there was no Writ of Droit des Difmes fued thereupon. But it seemeth against reason; for the Writ of

K 2

Droit of Tithes lay as well for the Patron, as the Indicavit

lay for the Parson.

And in 31 E. r. it appeareth that a man shall have a B Writ of Right de medietate Advocationis, where an Advowson is partable betwixt two Coparceners, and one of them is disturbed by a stranger.

But the Writ of Right de Advocatione medietat. Ecclefie lay where two Coparceners do present two Parsons to one Advowson, &c. As there are in some Churches two Par-

fons,&c.

And a Writ of Right of Advowfon lieth de Advocatione C Vicaria, vel Prabend', vel Capella, and fuch like, as well as de Advocatione Ecclesia. And the King shall have such Writ as well as a common person. But a man shall not tender a D Demy-mark against the King to enquire of the Seifin alledged in the King's Count, or Declaration, as he shall in case a common person bring the Writ. Neither shall a man have final Judgment against the King, although it be after the Mise joyn betwixt the King and the Tenant.

And a man shall have a Writ of Right of Advowson of a F Chappel which is a Donative, as well as he shall have if it

were presentable to the Ordinary.

# Affise de Darrein Presentment.

THe form of the Writ of Darrein Presentment for a com- F mon person is such:

Rex Vic. Salutem. Si A fecerit te fecur', &c. tunc summ', &c. xii. liberos & legal. homines de visn. de B, quod fint coram Justic. nostris, &c. parati Sacramento recognosc. quis Advocat. tempor. pacis presentavit ultim. Personam, que mortua est, ad Ecclesiam de C, vel ultim. Vicar, qui mortuus est, ad Vicar. de N, que vacat, ut dic', & cujus Advoc. idem A dic. adse pertinere; & interim Ecclesiam illam videant, & nomina eorum imbreviari fac', & sum. B, qui Advoc. illam ei deforc', qued tune fit ibi, audit. illam Recog'. Et habeas ibi Summ', & hoc Breve. Tefte, &c. But for the King the Writ is; Rex Vic. falutem. Sum' per bonos Sum. xii liberos, &c. and shall not fay, si Rex fecerit, &c. te fecur', &c. because the King shall 47. & 9 E .: not find Pledges to me an Action, for he shall not be amerced,&c.

Note that ma Dua advecatus, € 20 E. 3 Darrein Presentment F 1. per Wilihid . 1.7. If the Affife

find Title for a stranger not named in the Writ, a Writ to the Bishop shall be a werded for him : and therefore one cannot make Title to a Prefentment in time el Wat. 7 E.z. Darreis Prefentment. 26 E.3.41. thid. 4.ac'.

And a man shall have Affife of Darrein Presentment , al. though he nor his Ancestors do present to the last Avoidance: as if the Tenant for life, or for years, or in Dower, or by the Courtefie, suffer an Usurpation unto a Church,&c. and die, he in the Reversion, who is Heir unto the Ancestor who last presented, shall have an Assise of Darrein Present ment; if he be difturbed. But if a man present, and then 10 E. 3. grant the Advowson unto another for life, and he suffer one Darrein Usurpation, or two, or three Usurpations; now at the next Present-Avoidance he in the Reversion, shall not have an Assise of ment 13. If Darrein Presentment, if he be disturbed to present And that the Affise appeareth by the Statute of west. 2. cap. 5. That the remedy find that of the Statute is given for the Heir of him who made the De- the Cour. mife, who is in Reversion, and not for the Lesior himself.

or Tenant in Dower

was the last who presented, by that the Heir shall have a Writ to the Bishop, and yet he cannot make Tirle by that Presentment. Comr.in a Quare Imped. And Seven gives the reason, because he cannot convey by them. But it the Heir do alledge the last Presentment in her self, and the Assise be to her by Default, and found ut fupra, yet rhe Heir shall recover. Cont. if they be at issue upon that Presentment.

And if a man present unto an Advowson, and afterwards 16 E. 2. the Parson doth refign, or is deposed, and the Patron presents Darrein again, and is disturbed, he shall have an Assise of Darrein Present. Present ; and the form of the Writ shall be; Quis ment 20. Advocatus tempore pacis presentavit ultim.personam, que mortua est ad Ecclesiam, &c. although that he resign, and be living. And the form of the Writ is to suppose that the Defendant 20 E. 3. doth deforce him of the Advowson, and yet by his Count Darrein he countern, that he or his Ancestors last presented unto more 13. the Advowson, by which he doth suppose that he is in possession of the Advowson; and yet the same is good.

If a man do present unto an Advowson unto which he & E.3.41. hath right, and afterwards the Incumbent dyeth, and a Darr. ?re-Itranger usurpeth, and presenteth unto this Advowson in sentment 4. the time of War, and after that Incumbent dyeth; now if he 7 E-3.ibid.2. who hath right do present again, and be disturbed, he shall have an Assise of Darrein Presentment, and this Presentment

made in time of War by the ftranger shall not grieve him. 6E.2.Dar. And so if a man present unto an Advowson, and after- Present. 16. wards the Incumbent dyeth, and another Ordinary doth 20 E.3. Mid. present by Lapse another Incumbent, and after that Incum- 13. for the bent dyeth; now the right Patron shall present, and if he Ordinary be diffurbed, he shall have an Affise of Darrein Preforment, in the right notwithstanding the mean Presentments.

And four the Gardian do, present in the right of the high right

of him who.

vid. 14 E.3. Heir, and the Incumbent dyeth, the Heir shall present; and if he be disturbed, he shall of an Assise of Darrein Present-Darrein Prefent. 19. ment, although the Guardian did present the mean and the Berry faith last Presentment. But if a man present unto an Advowson, that he hath and after lease the same for term of years, and after the feen the presentment Church is void, and the Tenant for years doth present &c. in the name and then the Incumbent dyeth, and the Lessor presenteth, of the Heir. and is disturbed; it seemeth that he shall not have an Affise 20 E.3; ibid. of Darrein Presentment, because the Tenant for years did 32. Green present in his own right. But Tenant for years shall have ac.5 H. 7. Affife of Darrein Presentment, if he have presented before; 16. ac. and so shall the Gardian of the Heir. if he have presented 5cE.3. before. Holt contr.

14 H.7.12.

If a man usurp upon an Infant, and present, which Infant per Fairfar. hath the Advowson by descent; and afterwards the Incumbent dyeth, the Infant shall present; and if he be disturbed, 32 35 H.6.60. he shall have an Aifise of Darrein Presentment. But if the In-Mes Com. fant perchase the Advowson, and present, and afterward the 236. 2.24. Church become void, and a stranger present, and usurp upon Yet all is one descent the Infant, and then the Incumber dyeth, the Infant presents, and is disturbed by a stranger; he shall not have a per II E.3. Darrein Presentment, but shall be put to his Writ of Right. Affife 87. If the Husband and Wife present unto an Advowson in

17 E.3. Darr. Prefentment 9. Shard, the hath no o-Impedst. Pole ac.

the right of the Wife, which is appendant to a Mannor of the Wives, and after the Husband alien one Acre, parcel of the Mannor, with the Advowson in Fee unto a stranger, ther remedy and dyeth, and the stranger presents, and alieneth the Acre but a Quare unto another in Fee, faving the Advowson unto himself, and then the Church voideth; the Wife shall present; and if she be disturbed, she shall have an Assie of Darrein Presentment. because the Advowson was severed from the Acre: but if the Advowson were appendant to the Acres then the Wife ought to recover the Acre before the present to the Advowfon.

And Affise of Darrein Presentment doth not lie for oneA 20 E.3. Dar. Preferement Coparcener against the other, as it appeareth M, 15.E. 2. and 11. and 13. M.20.E.3.

but they feem to make a difference, when the disturbance is before the composition to prefent by turn, and when after.

> And if one Defendant die in a Darrein Presentment, theB Writ is good by the Survivor against the other.

If a Disturber present unto an Advowton, and the Pa- C tron bring an Affife of Darrein Prefentment, and pendant the Writ the Incumbent dyeth, if the Disturber presenteth ano-

The najon of y'y por Titoth wroke y Entries there y' roife was to sen away by y Dy continuant And nothing Every Entry into y & Bo way not knowfull there hors not sawfull tops sent ec. fint gry: fol 1726: 307a. rid y Stat 32 Hos Chap 205=

ther Incumbent dyeth; yet the Patron shall have an Assise of Darrein Presentment upon the first Disturbance against the 33 H.6.32. Heir of the Disturber, per Journeys accounts: and so if the The Church Disturber present two or three times within the six months, tigious between Patron shall have an Assise of Darrein Presentment twist Parupon the first Disturbance.

not agree, the Ordinary ought to admit the Presentee of the eldest; but contrary of Joynt-Tenants.

D Et provisum fuit coram Domino Rege, Archiepiscopis, Epi- This Proscopis, Comitibus, Baronibus, quòd nulla Assifa ultima pra- viso istaken sentationis de catero capiatur de Ecclesiis Praebendatis, nec de away by Praebendis, Hil. 19.H.3.

# Quare Impedit.

E THe form of the Writ of Quare Impedit for the King in the right of his Crown is such:

Rex Vic. Lincoln' salutem. Præcip. W. Archiepiscopo & R vid. Fitz.
quod permittant nos præsentare idonea Personam ad Ecclessam de Na. B. 25.
W. quæ vacat & ad nostram spestat Donationem, & unde præd' where a
W. Archiep. & R. nos injuste impediunt, ut dicitur. Et nist, have an As&c. sum', &c. præd. Archiep. & R. quod sint coram nobis, &c. vel sise of Darcoram Justic. nostris de Banco, &c.

he may have a Quare impedit, but not econtra. C. 5. part 102. In a Quare Impedit the Writ fuit ad E. cicfiam; and the Count de Advecatione duarum partium.

For the King may sue this Writ, and every Writ, in what Court he will.

F And if the Kinghath Title to present unto an Advowfon by reason of the Landsand Temporalties in his hands, of a Bishoprick, or Abbey, or Gardianship of any Heir, then the Writ is:

Rex Vic.London' salutem. Pracip. W Archiepiscopo, quod permittat nos prasentare idoneam Personam ad Ecclesiam de W, qua vacat, & ad nostram spectat Donationem, ratione Episcopatus Cantuat. nuper vacant', & in manu nostra existent', & unde idem Archiep. nos injustò imped', ut dic',&c.

And if it be unto a Prebend, then thus: Ad Prebendam de I in Ecclesia,&c. que vacat,&c. ratione Episcopatus,&c.

And if it be by reason of Ward, then the Writ shall be; Que vacat, 3 ad nostram, &c. ratione Custod terr. et heredis T, quondam Comitis de A, defuncti, qui de nobis tenuit in capite, et in manu nostra existentis, et unde præd, &c. nos injuste, &c.

And if it be by reason of Wardship by occasion of another Wardship, then the Writ is; Que vacat, et ad nostram, &c. ratione Cuftodia terr.et bared. I T, in manu Domini E. nuper Regis Angl', Patris nostri, ratione Custod. terre et hæred. S de C, quondam comitis Glouc', defuncti, de qua idem I terram suam tenuit per servitium militar, in manu ejusdem Patris noftri existent', et unde idem,&c.nos injuste imped', ut dicitur.

And by the Register, the King shall joyn with another person in a Quare Impedit; and the form of the Writ is such: Rex Vic', &c. Pracip. R de C, quod juste, &c. permittat nos, et G P de T, præsentare idoneam Personam ad Ecclesiam de K, que

vacat, et ad noftram, ratione Cuftod.terre et bæred.I, que fuit uxor T de N, qui de nobis tenuit in capite, defuncti, in manu nostra existentis, et adipsius P de T spectat Donation', et unde pred',&c. nos et prefat.P de T injuste imped.

TI E.3.Br. du 73.

But now the common opinion is, that the King shall have Quare impe- the whole Presentment alone, and alone shall have the Action. But methinks that it flands with reason that the King and the other joyn; as in a popular Action the party shall sue for the King and for himself, and the words of the Writ are: Quitam pro Domino Rege, quam pro feipfo fequitur, &c. and that in an Action of Debt,&c. and by the same reason the King may fue for himfelf and for the party. And the common experience is, that a man shall hold Lands in common with the King, and also Chattels : and by the same reason they may have the Prefentment or Advowson in common.

> And if a man be disturbed to present unto a Parsonage, H then the Writ shall be ; Prec, &c. quid permittat ipsamprafentare,&c. ad Ecclefiam,&c. for the word Ecclefia is always intended a Parlonage. And if it be a Vicarage, then the Writis; quad permittat ipfum prefentar.ad Vicar. And if it be a Prebend, then ad Prebendam; and if a Chappel ad Capellam; and so he ought to name the Advowson as it is, &c. 8H.

6.22.

chattles pso

rals:10 El:

A man shall not have a Quare impedit de Advocat. medie- A X Contra Collegation, nec de medietat. Advocationis, &c. And if one man B m first, growthe Prefentation, if he name his Clerk, and he who hath the Presentation, present another Clerk; he which hath the Nomination shall have a Quare Impedit, and the Writ shall be, quod permittat ip um presentare, &c. and in his Count he shall fer forth the special matter, and it shall be good.

And so if a man hath a Chantery, which is a Domative C by Letters Patents, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his

Chantery, or giveth the same by Letters Patents; he which hath Right shall have a Quare Impedit of that Donative; and 17 E.3.12; the Writ shall be, quod permittat ipsum presentare, &c. ad Cantariam, &c. and in the Count he shall set forth the special matter.

And if a Bishop be disturbed to present where he ought to make Collation, the Writ shall be, quod permittat ipsum presentare,&c.and he shall count upon the Collation.

And foif the King be diffurbed to collate by his Letters Patents unto his free Chappel, he shall have a Quare impedit, and the Writ shall be quod permittat insum presentare, &c. ad Prebendam in his free Chappel, &c.

And a Quare Impedit lyeth of a Priory, or of an Abbey; 14H.4.36.b. and the Writ shall be, quod permittat infum presentare ad Prio-

ratum seu Abbatiam,&c. See Book of Entries 59.

G And there is another form of Writ, quod permittat epsum presentare ad Ecclesian Domûs S. Martini Bristol', que vacat,

&c.and so of an Hospital, and the like.

And a man shall not have a Quare Impedit if he cannot alledge a Presentment in himself or in his Ancestors, or in another person, from whom he claimeth the Advowson, and that in his Count, if it be not in special cases: as if a man at this day erect a Church Parochial by a License of the King, or other Chantery, which shall be presentable, &c. if he be disturbed to present to the same, he shall have a Quare Im-21E-4-2,3-pedit, without alledging of Presentment in any person, and 16H-7.8. Kibs as

shall count upon the special matter.

And if a man doth recover an Advowson against another in a Writ of Right, when the Church voideth he shall present, and if he be disturbed, he shall have a Quare Impedit, and alledge the Presentment in him against whom he recovered, without alledging any other Presentment. And a man shall have a Quare Impedit and alledge a Presentment by his Prostor, and it shall be good, without

alledging a Presentment in himself: quad vid. 17.E.3.

And if an Abbey hath been Parson impersonce time out C.2. Part 47; of mind, and afterwards the Abbey is disturbed, he of b.ac. whom the Advowsonis holden shall present, and if disturbed, shall have a Quare Impedit, without alledging of any Presentment in the Count, but shall shew the special mat-

If Coparceners make partition to present by turns, and fo do, and afterwards the younger Sister die, her Heir within age, and in Ward to the King, and afterwards the Church void two or three times during the Nonage of the Heir,

who

16 H.7. 8.

who is the King's Ward; the King shall present, and if he be disturbed, he shall have a Quare impedit alone, as it appear. 17 B.3.Br. Quare Impe- eth M.22.E.4. But, saving the opinion of the Book, I conceive the Law to be otherwise, because the Inheritance of the Presentment is several, &c. And if two Sisters be, and M have an Advowson which becometh void, the eldest Sifter shall have the first Presentment; and so the Husband of the eldest Sister (if he be Tenant by the Courtesie of the Advowson) shall have the first Presentment, and the Tenant in Dower shall have but the third Presentment,&c.

If the King have an Advowson in Fee, which voids, and N during the Avoidance the King granteth the Advowson in Fee, the King shall not present to this Avoidance: but if the King have an Advowlon by reason of the Temporalties of a Bishop, and during the Avoidance the King restore the Bishop the Temporalties. yet he shall present unto the Ad-

vowson, and not the Bishop for this Avoidance.

If the Heir sue his Livery and hathit, yet the King shall o present unto an Advowson which became void during the time that the Advowson and Land were in the King's hands. If a man befeifed of an Advowson in gross or in Fee ap- p

pendant unto a Mannor, and the Advowson void, and he 14 H.S. Dier dyeth, his Executor shall present, and not the Heir, because it was a Chattel vefted and severed from the Mannor. And if O a man be diffeifed of a Mannor unto which an Advowfon is appendant, and the Advowson become void, the Disseise may present, and have a Quare Impedit, although he hath not entred into the Mannor. But if the Bishop die, and the R Advowson happen void before his death, the King shall prefent unto the same by reason of the Temporalties, and not

the Bishop's Executors.

So if a man have a Mannor unto which an Advowson is S appendant in Fee, and the Church void in the Fathers time, after 34 K. and he die, and his Heir in Ward to the King, the King shall have the Presentment.

> Gardian in Socage of a Mannor unto which an Advowson T is appendant, and the Church void, the Heir shall present, and not the Gardian, because he cannot account for the

> If the King grant unto an Abbot and his Auncestors that V the Monk shall have the Temporalties during the Vacation, now if the Advowson happen void during the Vacation, the Monks shall present to the same. M. 30. E. 3.

> The Presentation to the Vicarage doth of common right A appertain unto the Parson; but he may grant the same to another by affent of the Patron and Ordinary,

Fol: 122: 8: 307.a:

4 C.3.

₹0 E.3.26. ac'. Vid. after 34 K.

Part 3.

2H.4.19. 40 E.3.14. 143.E.

The Heir in tail shall not have a Presentment sallen in the life of the Tenant in tail, but the Executor of Tenant in a tail. So the Termer shall have the Presentment which happeneth during the Term, although that he hath not presented during the Term to the A dvowson, &c.

The King may repeal his Nomination or Prefentation, but 7 H.4.32. Dier 260. D a common person cannot so do. And the King shall have a 25 E. 3. 472 Writ unto the Bishop to induct one into a Prebend which Robert de the King hath given unto him 3 and to give him a seat in the Kelfry Case. Quire, and a place in the Chapter house.

And a man shall have a Quare Impedit of an Hermitage, and a Writ to put him into Corporal possession.

If the King recover by Quare impedit, and afterwards ratifie the eflate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. T. 9. E. 3. In a free Chappel of the King; where the Dean ought to give the Prebends, if he do not collate within six months unto them, then the King shall present by Lapse to them as Ordinary.

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If an Advowson be void by fix months, at which time the King is seised of the Temporalties of the Bishoprick, the King shall present to this Advowson, as the Bishop should do; and the King shall have a Quare Impedit of the Sub-Deaconry of York which voided when the Temporalties of the Archbishoprick were in the Kings hands; and the Writ shall be, quod permittat eum presentare: and yet the King shall give this Sub Deaconry by his Letters Patents.

Where Partition is made betwixtCoparceners by License of the King of an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next turndyeth, her Heir within age and in Ward to the King, and the Church void; the King shall have a Scire facias against the other Coparcener, &c. upon that Partition, and yet he was a stranger to the Partition.

If two Coparceners make Partition to present by turns, although that one of the Coparceners do afterwards usurp upon the other Coparcener, and presents in her turn, that Presentment shall not put her out of possession, but she shall have her turn when it falls again, and shall have a Quare impedit, or a Scire facias upon the Composition, if it be upon Record, if she be disturbed for to present, &c.

If a Bishop make a Collation, and before Induction or 50 E. 3.26. Installation dyeth and the King seiseth the Temporalties; 33 E.3.4 he shall have this Presentment, because that the Church is not full against the King, until the parson or prebend be installed or inducted.

Quare Impedit. 76 If a Parson hath a parsonage, and afterwards doth take L 24 E.3.33. another Benefice without Dispensation; now the first Benefice is void, and the Patron thereof may prefent, for this Avoidance is called Cession.

Br.Prefentment al Belife 46.

14 H.6.24.

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If in the time of Vacation of an Abbey or Priory, a M Church happen void which is of the Patronage of the Abbot or Prior, and a stranger doth usurp and present thereunto; this Usurpation shall not prejudice the Successor; but at the next Avoidance of the faid Church he may present, and have a Quare Impedit; But otherwise it is if an Usurpation shall be had in the time of his Predecessor, for that shall put the Successor out of possession, if the fix months be past.

If a Vicarage happen void, and before the Parson pre-N fent, he is made a Eishop, &c. yet he shall present unto this

Vicarage, because it was a Chattel vested in him.

The Founder of a Priory shall have a Quare impedit a-0 gainst the Subprior and the Covent, if they disturb him to present an Advowson which belongeth to the House, if it void during the Vacation, where the Founder ought to have the Temporalties during the Vacation. P.9 E.3.

If a man traverse an Office found of a Mannor unto P which an Advowson is appendant, and upon the Traverse the King leafeth the Mannor unto him who tendred the Traverse, without mentioning the Advowson, and afterwards the Church void, he who tendred the Traverse shall have the presentment, if the Traverse be found for him.

If a Feme be affigned the third part of a Mannor unto O which an Advowson is appendant in Dower, she shall have

the third presentment.

If the Patron be Out-lawed in Trespass, and the Church R void, the King shall present, because of the Out-lawry.

If a Feme purchase an Advowson, and take a Husband, S Feme is difturbed and and the Church void, and a stranger doth present, and the taketh Huf- Husband fuffer an Ulurpation, &c. by this Ulurpation the Wife shall be out of poliestion, after the fix months past; Church void and she shall be put to her Writ of right of Advowson, if the Husband the have prefented before; and if the have not prefented, prefents, the the is without recovery: But otherwise is it if the Feme shall have an Advewson by descent, or by course of inheright in the ritance.

If an Infant or a Feme Covert do not present within fix ? months, the Bishop may present for Lapse.

One Joyntenant, or Tenant in common, shall not have Y 2 Quare impedit for the Advowson which they have in com-

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mon, or in joynture, if one of them present solely against his Companion. But if two Coparceners cannot agree in the presentment, the eldest Sister shall have the first pre- 35 H.8. Dy; sentment, and he who hath her Estate shall have the first 55. Advowpresentment; and if he be disturbed by the other Copar- fon descends cener, she or he who hath her Estate shall have a Quare im- in two Copedit against the other Sister; and the Coparceners and parceners, those who have their Estates shall present as Coparceners one of full ought to do, scil. the eldest first, and then the middlemost, other withand then the third, and then the fourth, and fo as they shall in age, the be of age, &c.

marrieth

the eldest, the Church void, he presents in both their names, the youngest cometh of age. Some are of opinion that if they do not agree, the eldest shall present, and it shall be her turn : Others contrary. Quare.

If an Infant have a Mannor unro which an Advowfon is appendant, and suffereth an Usurpation when the Church becometh void, and afterward at full age grants the Mannor in Fee, and afterwards the Church become void; the Infant shall present, and not the Feoffee of the Mannor, for the Advowson was severed by the Usurpation; and yet the Infant may prefent to the fame.

If the Kings Tenant hath title to present unto an Advowson which is void, and the fix months pass, and afterwards the Kings Tenant dyeth before the Bishop presenteth for Laple, his Heir within age, and in Ward to the King: the Bishop shall not present for Lapse, but the King shall have this presentment, by reason of the Wardship. P.18.E.3.

If Tenantin tail of a Mannor, unto which an Advowfon isappendant, discontinue the Mannor in Fee with the Advowson, and after the Discontinuer granteth the Advowfon unto another in Fee, and afterwards doth re-infeoff the Tenantin tail of the Mannor, who dyeth feifed of the Mannor; his Heir shall present unto the Advowson when it shall happen void: and if he be disturbed, he shall have a Quare impedit, because he is remitted unto the Mannor, and hath not remedy to come to the Advowfon.

The Defendant in a Quare impedit may fue a Quare impedit against the Plaintiff, if his Clerk be not admitted nor instituted. And if the Plaintists Clerk be instituted and inducted pendant the Writ, it shall not abate the Plaintiffs Writ; but in that Case if the Defendant recover against the Plaintiff, he shall avoid the Plaintiffs Clerk; and so if the Defendants Clerk be admitted pendant the Writ against him, if the Plaintiff recover, he shall avoid the Defendants Clerk: 35

Clerk: But if the Clerk of the Defendant were admitted and inflituted at the time of the purchase of the Writ, and the Plaintiff purchase the Writ only against the Patron, not naming the Incumbent; although the Plaintiff recover, he shall not avoid the Defendants Clerk, because he might have named him in the Quare impedit.

If a Stranger do prefent unto an Abbey or Priory which D is eligible by the Covent, and his Clerk be infittuted and inducted; Quere, how this wrong may be after redreffed

and reformed.

If a man hath a Chappel or Chauntry which is donative E 20 Eliz.11. by Letters Parents, and he once present unto the Ordinary Hare's Case, his Clerk to the Chauntry, he shall never after collate, but he ought to ought to present unto the Bishop; and if he do not prebe inducted. fent within fix months, the Ordinary shall have advantage of the Lapse.

A Presentment made by a Stranger unto an Advowson F which is appropriated unto an Abbey, be the Presentment in the time of Vacation, or in the time of the Abbot, is void, although that the Clerk be inflituted and inducted: but if the Abbot himself present unto the Bishop his Clerk to an Advowson which is appropriate to his House, this Presentment doth disappropriate the Advowson, and make it presentable after; and if he do not present within fix months after every Avoidance, the Bishop shall present for Lapse. The Bishop ought to present his Clerk for whom it G is first found by a Jure Patronatus.

1 H.7. 9. 12 & 13 Eli. Dy.293.e. 237.

The Bishop shall not have the advantage to present by H Lapse, where the Church doth become void by Resignation or Deprivation, without giving notice thereof to the Patron.

Dr.& Stud. 117. 12 El.Dyer 293. Where the Bishop doth refuse the Clerk of the Patron I for non-ability, or for crime, he ought for to give notice thereof to the Patron, otherwise he shall not present for Lapse; but after the six months past, the Patron shall have a Writto the Bishop, if the Church do remain void, and the Bishop hath not collated thereunto.

The Chancellor of England shall present to all the Kings K Churches which are under the sum of twenty Marks by the year, which are in the Kings gift, and in the right of the Crown: But if the King bath them by any other Title, then

the Chancellor shall not present unto them.

C. 10 Part, 134. 38 E.3.36. The death of one Plaintiff, nor the Non-fuit of one Plain-L
tiff, shall not abate the Writ, but he shall be severed.

t, shall not abate the Writ, but he shall be severed.

Where an Infant hath an Advowson by descent, and the M

Church

Church voideth, and he who hath Title paramount doth usurp, and present unto the same Church, and the six months do pass; he is remitted by this Usurpation, and the Insant out of possession, and without remedy by that Usurpation.

N If a man hath an Advowson, and the Church doth become void, and two strangers do severally present their Clerks to the Bishop to that Advowson; the Patron shall have divers Quare impedits against them, if he will, and shall have several Judgments, and shall recover several damages for their several Presentments and wrongs done.

If a man maketh another his Proctor, to present unto all his Advowsons, and to do several things for him; if the Fitz. Proctor present, as Proctor unto him, unto an Advowson imp. 68.

Proctor present, as Proctor unto him, unto an Advowson imp. 68.

Presentment shall put him out of possession of the Advowson, and shall give the possession to the other.

In a Quare impedit for the King, although the Defendant hath a Writ unto the Bilhop against the King, the King may have a new Quare impedit against him of the same Avoid-

ance, and make other Title.

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If Prior and Covent ought to chuse the Abbot, and name him to the Patron, and he to present him to the Bishop, and they chuse one for Abbot, and name him to the Patron, and the Patron doth present another to the Bishop; they may sue in the Spiritual Court for remedy, as it is said, H-11 E-3. Tamen quere; for it seemeth they are enabled to 40 E-3.28. Sue at the Common Law, as well as they are enabled to per Fertesiane, chuse and name the Abbot. As the Prior of Westminster and the Covent hath power to sue their Abbot for an Advow-son, M-20 E-3.

If the Diffurber present two or three times within the fix months, yet a Quare impedit lieth against the Disturber upon the first presentment, if he purchase the Writ within

the fix months.

where a man doth recover in a Writ of Right of Advowson, he shall present at the next Avoidance, and shall 16 H.7.8. have a Quare impedit, without alledging any Presentment in per Keble. himself or his Ancestors, but shall declare upon the Recovery. Or may have a Scire facias upon the Recovery. And somay his Heir have a Scire facias upon that Recovery against the Heir of the other party, at the next Avoidance after the Recovery; but not after, as it seemeth.

If a man recover in a Quare impedit, he shall have a Scire 15 E.2.fol. facias against the Patron and the Incumbent who made 174.

Default, if he will fue Execution of this Recovery.

36

16 H.7.8;

&c.

If Coparceners make Partition in the Chancery or in the Common Pleas, to present by turns, and afterwards a stranger doth usurp in their several turns; yet after when their turns come, every of them may have a Scire facias upon this partition against the stranger when his turn cometh, to thew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is, if the Partition be of record, then they shall be put to their Writ

of Right by reason of this Usurpation.

If Coparceners make Composition to present by turns, D and a stranger doth usurp, and presenteth in the turn of one of them; yet if they will they may joyn in a Quare impedit against the stranger, notwithstanding the Composition. And after composition to present by turns, if they do prefent in common, they may well fo do. But it feemeth by that, that the Composition is waved; for if Coparceners (where one is within age) make Composition to present by turns, and at full age they present contrary to this Partition, these Presentments shall avoid the Partition made before.

If the eldest son by the first Venter present, and dieth E without Heir, and afterwards the Church becomes void, the younger by the second Venter shall not present, nor have this Advowson. But Devon faith, If a man hath two Daughters by divers Venters, and they enter and make Partition to present by turns, and one dieth without Heir, the other Sister shall be her Heir: quod fuit concessum. But after the Partition, if one Sifter hath presented, and afterwards dieth without Heir, it seemeth her Sister of the half bloud shall

not be Heir unto her.

If a man be diffeifed of a Mannor unto which an Ad-F vowson is appendant, and the Disseisor suffer an Usurpation by a stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Mannor; he shall present unto the Advowson when it doth become void, notwithstanding fuch Usurpation.

Spoliation.

Here is a manner of Suit called Spoliation, for the Fruits G or a Church, or for the Church it felf, which is to be fued in the Spiritual Court, and not in the Temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what person shall have that Suit, and against what person it will lie, and for what thing he shall fue, and when he shall sue, and in what Court.

Spoliation properly liethfor an Incumbent against another H Incum-

Incumbent, where the right of the Patronage doth not 38 H.6.20. come in debate: As if a Parson be created Bishop, and hath Fortescue. a Dispensation to hold his Rectory, and afterwards the Patron doth present another Incumbent, who is instituted and inducted; now the Bishop shall have a Spoliation against that Incumbent in the Spiritual Court, because he claimeth by one Patron, and the right of the Patronage doth not 26 H.S.3.

come in debate.

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And so if a Parson do accept of another Benefice, for which the Patron prefents another Clerk, who is instituted and inducted; now one of them may fue a Spoliation against the other, and then it shall come in debate whether he hath Plurality or not. But if a Patron do present a Clerk unto an Advowson, who is instituted and inducted, and afterwards another man doth present another Clerk to the same Advowson, who is also instituted and inducted; there one of them shall not have a Spoliation against the other, if he disturb him of the Church, or to take the fruits thereof, be-cause the right of the Patronage doth come in debate in the 51.1. Spiritual Court, which of the Patrons hath right for to prefent: and therefore in that Case, if one of them sue a Spoliation against the other, he shall have a Prohibition unto the Spiritual Court, and no Confultation shall be granted for the cause before said.

And if one Clerk, without any Presentation, Institution, or Induction, do cast another Parson out of his Rectory, and taketh the profits thereof, the Parson shall not have a Spoliation against him, but an Action of Trespass, or an Affife of Novel diffeiffn; for Spoliation doth not lie, if not 38 H.6.19. against him who cometh to the possession of a Benefice, or Markham. against him who comet it to the potention of a Belletick, 26 H.8.3. unto the fruits thereof, by the course of the Spiritual Law, 26 H.8.3. feil. by Institution, &c. so that he have colour to have it, and to be Parson by the Spiritual Law.

So if a Prebend happen void, and the Bishop collate thereunto, and before Induction the Eishop die, and the Temporalties come unto the King, and afterwards he is inducted, and afterwards the King giveth the fame by his Letters Patents unto another Clerk, who is inflituted and inducted; the first Clerk shall have a Spoliation in the Spirirual Court against the Presentee of the King, because the King ought to have removed him by Quare impedit, and not to have collated as he did. And there the Patronage doth come in debate.

If an Abbot have a Mannor unto which an Advowson is appendant in Fee, and he doth appropriate the Advowfon

M.44 E.3. 33. Quare imp.4. to him and his Successors, and afterwards leaseth the Mannor for one thousand years, and also the Advowson, and the Leice makes an union of the Parsonage and the Vicarage, and presents the Vicar unto the Ordinary as Parson, &c. by reason whereof the Abbot such a Spoliation against the Vicar, and the Vicar such a Prohibition; the Abbot shall not have a consultation upon the matter shewed. By which it appeareth, that a Spoliation doth not lie for the Abbot in this case; for that the right of the Patronage doth not come in debate.

38 H.6.19,

And so if an Abbot be Parson imparsonee, and a stran-B ger present his Clerk to that Advowion, who is instituted and industed; the Abbot shall not have a Spoliation against the Clerk, but an Astion of Trespass or Assis, if he be ousled; because the Right of the Parsonage is to be tried.

And if a Clerk obtain a Benefice by provision, for which C cause the King is to have the Presentment for that time, because the very Patron did not present within the time limited him by the Statute of 25 E-3, and the King presents to the Church his Clerk to the Ordinary, who is instituted, and before Induction takes the profits; he who is in by provision shall not have a Spoliation against him, because he doth not come to the posession of the Church by the Spiritual Law, but as an Intruder and Trespassor. But if the Presentee of the King were inducted, then there is no remedy for him who hath the Benefice by provision.

A Clerk had a Collation by the King unto a Chappel, and D was purinto policifion by the Sheriff, and afterward the Clerk was oufted by a Prior, &c. in that case he shall not

have a Spoliation, but an Affife or Trefpafs,&c.

But it appeareth by the Register, that one Parson shall E have a Spoliation against another Parson, which have divers Patrons, &c. if he be spoiled of any Tithes or profits appearaining to his Church, which do not amount to the sourth part of the value of the Church, as before is said. But if they do amount unto the sourth part of the Church, then one Parson shall not have a Spoliation against another Parson, if they claim not of one Patronage, so that the Title of the Patronage doth not come in debate; and then he shall have a Spoliation; and if the other sue a Prohibition, &c. he shall have a Consultation.

#### Ne admittas.

His Writ of Ne admittas lyeth for the Plaintiff in a Quare Impedit: and the same is where one hath an Action depending in the Common Picas of Darrein Presentment. or of Quare Impedit, and he supposeth that the Bishop will admit the Clerk of the Defendant pendant the Plea betwixt them; then he may sue this Writ directed to the And this Writ ought to be fued within the fix months after the Avoidance; for after the fix months he shall not have this Writ, because that then the Bishop may Nota, In present for Lapse; and therefore it is in vain then for to sue reading it is this Writ, because that t e Title to present is then devol- holden that ved unto the Bishop: but the King may sue this Writ after the fix the fix months, where he hatha Quare Impedit depending, months or Affise de Darrein Presentment, because that Nullum tempus shall not be occurrit Regi.

But there is a Rule in the Register thus, Not and um est, by 28 days quando Rex prefentat ut in jure Corone, tune incurrit ei tempus. ing to the

But that is not Law at this day.

And the Writ of Né admittas for the King is such :

Rex venerabili in Christo Patri W, eadem gratia Winton. Episc', salutem. Prohibemus vobis,né admittatis Personam ad Ecclesiam de I, que vacat, ut dicitur, & de cujus Advocation. content. mota eft in Curia nostrainter nos &A: Or thus, inter A & B, donec difcuffum fuerit in eadem Curia, utrum ad nos an ad priet. A: Or thus, in eadem Curia ad quem corum pertineat ejusdem Ecclesia Alvocac': Or thus, internos, ratione Abbatia de Svacantis, & in manu nostra existentis, &H. Linc. Episc, donse discussum fuerit in eadem curia nostra, utrum ad nos ratione Vacationis pr.ed', an ad pr.efat. Epifc. pertineat ejufdem Ec-

And it seemeth that the Defendant may sue this Writ as 21 H.6.46; well as the Plaintiff, if the Defendant do suppose that the Bishop willadmit the Clerk of the Plaintiff pendant the Writ. And this Writ of Ne amittas dothnor lie, if the Plea 2 E.4.11. be not depending in the Kings Court by Q are Impedit or Affise of Darrein Pr sentment. And therefore there is a Writ in the Register directed unto the chief Justice of the Common Pleas, to certifie the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt fuch and fuch perfons, &c. And therefore it scemeth the Writ of Neadmittas shall not be granted, before the King be certified in the Chancery, that fuch Pleas

moneths,

of Quare Impedit or Darrein Presentment be there depending in the Common Pleas. But yet the Writ of Ne admittas may be granted out of the Chancery, directed unto the Bishop, that he do not admit,&c.before the King be certified in the Chancery, that such Plea of Quare impedit or Darrein Prefentment is depending in the Common Pleas, then the party grieved may require the chief Justice to certifie the King in his Chancery, that no fuch Plea is depending there, and thereupon the party grieved shall have such Writ:

Rex venerabili in Chrifto Patri, &c. Licet nos per Breve nostrum vobis probibuimus, ne admitteretis Personam ad Ecclesiam [38.] de I, [utin Brevi de Nè admittas] quia tamen per certificationem dileit, &c. I de Snobis constat, quod nullum placitum pendet in Curia prad. coramiplo & fociis fuis Justic. nostris de Banco inter nos & praf. W. de Advocatione prad, Vobis mandamus, quod id quod ad offic.vestrum in hac parte noveritis per tinere, libere executiatis, Prohibitione nostra præd.non obstan-Tefte,&c.

> And when the Bishop himself is party and disturber, A then the form of the Writ of Ne admittas is as aforefaid; Prehibemus vobis, ne admittatis. Yet the form of the Writ used to be , Prohibemus vobis, ne conferatis Clericum Ecclesia,

&c. que vacat, &c.

# Breve Episcopo ad admittendum Clericum.

IF a mando recover his Prefentation in the Common Ple-B as against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the Metropolitan; and the Writ shall be such:

Rex venerabili in Christo Patri,&c. Cum Prior de I, &c. in the Bish. be Curia nostra recuperasset versus vos Prasentationem suam ad Viparty. Qua- cariam de W; Vobis mandamus, quod ad Prafentac.ipfius Prioris ad præd. Vicariam idoneam Personam admittatis,&c.

And if a manrecover against another than the Bishop, C then the Writ which shall be made to the Bishop, shall be thus:

Kex, &c. Cum Prior,&c. in Curia no fra, &c, recureraffet verfus IP, &c. Vobis mandamus, quod non obstante Reclam. præd. I P ad Presentac.pred. Prioris,&c. idoneam Personam admittatis, &c. And upon that he shall have an Alias and a Pluries, if the Bishop do not execute the Writ, and an Attachment against the Bishop, if need be.

Plaintiff thall have a Writ to the Bift. court.in Difclaimer in a Writ of Right of Advowfon. 6 E. 3. 7. Er or 78. The reason is, because he cannot remove his Clerk after the fix months paft.

7 H.S. 32. 8 H.4. 22. A Writ shall islue to the Metropolitan, if

re, for the Bìth. did disclaim as Patron in 8 H.4.

In a Quare

supedit the Defendant

disclaims,

there the

But if the King do recover in the Common Pleas any Prebendary, or Sub-deanry, or Dignity against the Bishop, and giveth the same by his Letters Patents unto another Clerk; the Clerk shall shew the Letters Patents in the Common Pleas, and thereupon shall have a Writunto the Bishop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the fame by other Letters Parents unto another Clerk; that Clerk shall have a Writ out of the Chancery, directed unto the Justices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the same to this Clerk by his Letters Patents, commanding the Justices, that they fend another Writ to the Bishop, that he admit this Clerk notwithstanding the King's Collation before made unto the, other Clerk.

E In a Cuare Impedit betwist two strangers, if there doth it H.4.71, appear to the Court a Title for the King, they shall award Hank, and a Writ unto the Bishop for the King.

If a man do recover an Advowson, and the fix months. <sup>21E.4.3</sup> pass, yet if the Church be void, the Patron may pray a Writunto the Bishop, and shall have it; and if the Church be void when the Writ cometh to the Bishop, the Bishop is bound to admit his Clerk. And in reason the same Law is, 14 H. 4. 17. if the Patron after the fix months, present unto the Bishop, Hankford, if the Church be then void, the Bishop is bound to admit the last then where

And a Quare impedit shall be sued against a Sub-Prior, in the &c. for Disturbance of the Patron. Trinit. 31 E.I. Count.

Where the Writ abateth for form or false Latine, the Defendant shall not have a Writ to the Bishop. If the Pa-7 H.6. 15. tron who is Desendant make Desaultat the Distress, and the per Curiam. Incumbent abate the Writ by Plea, a Writ unto the Bishop the Patron shall not be awarded for the Patron, because he made desault.

Results to the Patron had appearant to the

made Default, in 7 H.6. 37. 14 H.4 16. upon Pleas of the Incumbent, a Writ awarded to the Bilhop.

I In a Quare impedit against the Bishop and others, all made to H.6.4. Default but the Bishop, and the Plaintist had not a Writ unto the Bishop against the others, until he had counted against the Bishop.

If the Plaintiff be Non-suit, the Defendant shall not have K 33 H. 6.i. 22 H.6. 44. a Writ unto the Bishop, before he hath made Title to the 1 H.7. 13. Advowson.

38 H. 6. 14. 34 H 6.44. 11 H.6.8. Note: And there the Writ was brought by two Coparceners against the third, and others.

Where the Defendant claimeth the Advowfon as Par- L Wint. 9 H. 6. fon imparsonee, although it be found for the Defendant, he 16.per Curiam ; the shall not have a Writto the Bishop. Plaintiff

Where the Writ abateth for Misnosm, or for insufficien-M shall have a cy, the Desendant shall not have a Writ to the Bishop. Writ to the If the Defendant do not appear at the Diffres returned a- N Bishop upon gainft him, the Plaintiff shall have a Writ to the Bishop,

without making Title.

infufficient

33 H.6.1.

7 H.4.37.

3 H. f. I.

Plea.

Ad.

21 H.6.36. If the Sheriff return upon a Quare impedit, quod querens O non invenit Ples', then the Plaintiff may find pledges in the Common Pleas, and shall have a new Quare impedit in the Common Pleas; and if the Sheriff return upon that Writ tarde, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have aWrit to the Bishop, because that no Writ is served against the Defendant.

Where the Plaintiff recovereth by Verdict in a Quare impedit, and it is found by the same Verdict that the fix months are past, and that the Metropolitane hath presented, whereas the Ordinary ought to have prefented, &c. and that the year is now past, &c. yet the Plaintiff shall have

a Writ to the Bishop.

If a man recover against a Bishop, he may have a Writ Q to the same Bishop, or unto his Vicar-general, if he be out of the Realm, or unto the Metropolitan.

A man fued divers Q are impedits against one Bishop, and R he was Non-fuit in all but one Writ; the Defendant had not a Writto the Bishopuntil that Writ was determined.

In a Quare impedit the Defendant pleaded to it.ue, and S after made default, and a Writ was awarded unto the Bishop for the Plaintiff.

At the Distringus returned against the Desendant, he T comes, and hath day by the prayer of the parties, and afterward makes Default; the Plaintiff shall not have a Writ to the Bishop, but a new Distringas.

In a Quare impedit, the Defendant maketh Title for him- A felf and others, and afterwards the Plaintiff is Non-suit; a Writ to the Bishop shall be awarded for the Defendant only, and not for the others.

At the Diffres returned against two, one appeareth, and 14 H.7.19. the other maketh Default; the Plaintiff shall have a Writ & 7 H. 6. to the Bishop against him who made Default; and yet it 15. may be that the other Defendant may bar the Plaintiff; and it is foused at this day: but the contrary was adjudged. A.7. E.3. for the cause before said.

In a Darrein Presentment betwixt two strangers, the Asfife found a Title for another stranger, who was not party to the Writ; he shall have a Writ awarded to the bishop for him, although he were not party to the Writ, because that the Writ is, Quis Advocatus ult. prefentaverit,&c.

Where a man hath a Quare impedit against one, and the Desendant hath a Darrein Presentment against the Plaintiff, and recovereth in the Darrein Presentment, and the Piaintiff is Non-suit in the Quare impedit, the Defendant shall have two Judgments against the Plaintiff, to have a Writunto the Bishop in both Actions; and two Writs shall be awarded to enquire of the damages; but he shall not render double damages for one Diffurbance.

When a man fueth a Quare impedit against another, and after pendant the Suit he fueth Ne admittas to the Bishop, &c. and afterwards they agree to prefent in common by turns to that Advowson; then he shall have a special Writ out of the Chancery unto the Bishop; to admit him who ought, by the Accord and Composition, to present at the first turn to that Avoidance. But first the King ought to send a Certiorari unto the Justices of the Common Pleas, to certifie in the Chancery of the Accord there; and upon that Certificate the King shall fend his Writ unto the Bishop, to admit his Clerk who by the accord ought to have the first Presentment and turn. And the form of the Writ in the Register is such:

Rex venerabili.&c. Cum nuper vobis per Breve nostrum probibuerimus, ne admitteretis Personam, oc. ejusdem tertie partis Advocac'. ac postmodum, ad prosecutionem ipsorum E & M,nobis suggerent, inter eos concordatum fuisse sub hac forma, quod præd E. hac vice præsentaret Clericum suum ad dict. tertiam partem, & pradict. M in proxim. Vocation. sequen. Clericum suum prafentabit, ficat per quedam feripta indentata inter eos confecta, & figillis suis confign', & coram nobis in Cancellaria nostraostenja, pleneliquet; ipsosque penes vos profecut. juisse, petend. cum inftantia, ut Clericum ipfius E bac vice ad dietam tertiam partem admitteretis, juxta formam concordie predict. Vos tamen, afferent. manus vestras prætextu Prohibitionis nostræ pradict ligatas, Clericum ipfius E admittere recufaffe; & nobis Supplicant's

Supplicant', ut fibi, ne collatio tertiæ partis prad. ad vos per Lapsum temporis, que in proximo, ut dicitur, imminebit, bae vice devolvatur, velimus de congrua appositione remedii in hac parte facer. provideri; mandaverimus dilecto & fideli nostro R de N, quod ipse cognitiones quas prafati E & M coram ipso facere velint, utrum viz. ipft fuper jure Prefentandi ad tertiam partem concordati effent in forma præd', & fi præd. M vellet quod Clericus per ipsum E ad eand. 3. partem presentatus has vice admitteret, ad eandem, reciperet, & si dicta Scripta effent Factaipforum E & M, & nos inde in Cancellaria nostra fub figillo veftro distincte & aperte redderet certiores : Et quia præj. Rnos ad mandatum nostrum certificavit, quod Concord. est interpref. E & M, quad pred. E bac instante Vocations prafentabit Clericum fuum ad dictam tertiam partem, & prad. M in proxim. Vacatione fequen', & fic pred. E & M & bared. Jui ad tertiam partem prad, alternatim imperpetuum pra-Sentabunt; & quod ad Conventionem illam firmiter observand. Scripta pred. inter partes pred. funt confecta: Vobis mandamus, quod idoream Personam ad præd tertiam partem ad Præfentat. prefat. E hac vice admittatis, & ulterius quod vestro incumbit officio in hac parte (Prohibitione nostra præd. non obstante. ) Teste, Oc.

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By this Writ it seemeth a man shall have a Quare impedit G quod primittat ipsim presentare ad tertiam partem Ecclesia; and it seemeth to stand with reason: for a Consolidation may be made of three Advowsons, and every Patron to present by turn, and then every one hath right but to a third part.

## Probibition and Inhibition.

Here are divers manners of Prohibitions and Inhibitions, H and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Regifter is, where a man fueth a Pracipe in capite against another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are so holden may sue this Writ directed to the Justices of the Common Pleas, commanding them, that if it do appear unto them that the Lands are not holden of the King, &c. but immediately of another, that they do not meddle with the Conusance of that Plea, but that they bid the party fue his Writ of Right Patent, fe . fibi viderit erpedire. And in a Writ of Right, if the Tenant vouch a Foreiner to Warranty, the Tenant shall have a Writ of Superfedeas directed to the Bailies of the same Court, to surcease the Plea until

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until the Warranty be determined; and if the Bailies will not furcease for that Writ, then the Tenant shall have another Writ of Inhibition directed unto the Sheriff, that he go unto the said Court, and to inhibit the Baylies, that they do not proceed in the Plea untill the Warranty be determined, &c. And if they will not surcease for that Writ, then the Tenant shall have Attachment against the Baylies, directed unto the Sheriff, returnable in the Common Pleas, or sing's Bench.

A · A Prohibition may be directed unto the Sheriff at the fuit of the Tenant, that he do not hold Plea in a Writ of Right, unless Battel shall be thereupon waged, because that the Te-

nant hath put himfelf upon the grand Affile.

And a man may have a Writ of Prohibition directed unto the Sheriff, to go unto the Lords Court, and to inhibit the Baylies, that they do not hold Plea in the Lords Court of a House, &c. inter A Petentem & B Tenentem. And he may have another Writ unto the Sheriff, to prohibit the Lord

himself, that he do not hold the Plea, &c.

And also the Tenant may have another Prohibition directed to the Sheriss, to prohibit the Baylies of the Bishop ick of the Hundred of F, that they do not hold Plea in the said Hundred inter A Pet. & E Ten, de Consutudinibus & Sérvitis que idem A de eo exigit de liber Tenem, quod de eo tenet in I, nisi Duellum inde vadiat. fuerit; because the said B hath put himself upon the grand Assie, &c. And is Tenant by Receitsue such a Prohibition, the Writ ought tomake mention of the Receit.

Where the Bishop holdeth Plea of an Advowson, or of the fourth part, or of the third part thereof, then the party shall have a Writ of Prohibition directed unto the Bishop himself,

in this form :

Rex vener. in Christo Patri A, eâdem gratia Episcopo Winton', & ejus Osse. ac eorum Commiss. salutem. Probibemus vodis, nè ten. Placitum in Cur. Christianitat. de Advocat. Ecclesse de N, vel medietat', vel tertie partis, vel quarte partis Ecclesse de N, unde S & F querunt' quod R trahit éos in Placitum coran vodis, &c. And he may have a Prohibition to the Party himself Nè sequatur, by these words; Prohibiemus tibi, nè sequatis Placitum in Curia christianitatis de Advocat', &c. unde C queritur quot tu trabis eun in Cur. &c. And he may have an Attachment thereupon against him, if he follow itaster the Writ cometh unto him

#### Prohibition.

And the King for himself may sue forth this VVrit, al-E though the Plea in the Spiritual Court be betwixt two common perions, because the Suit is in derogation of his Crown.

And the Kingmay fue an Attachment upon the fame, F if they do proceed, &c. And in the time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Gardian of the Spiritualties, Je ejus Officiali & commiffariis. G And a Prohibition lyeth for Chauneries, Chappels, Prebends,

and Vicarages,&c.

If a man fueth another in the Spiritual Court for a Chat-H tel or Debt, the Defendant shall have a Prohibition, and the VVrit shall be; Prohibemus vobis, ne ten. Placitum in curia Christianitatis de Catallis vel debitis, &c. And he may have a VVritunto the party himseif, that he shall not me there, &c. and shall have an Attachment thereupon, if they tue there afterwards,&c. And also the King may fee this \ Vrit, and it may be directed unto the Judge and Party. And the

King may have an Attachment upon it.

If a man fueth another in the Spiritual Court for a Lay I fee, which is Land or Tenements, or the like, then he shall have a Prohibition, and the VVrit shall be; Prohibemus vibis, &c.nè teneatis,&c.de Laico jeodo Regis in S, unde queritur quod H. trahit eum in Placitum, &c. And he may have another VVritunto the party himfelt, &c. Ne fequatur, &c. and he may fue an Attachment uponit; and he may fue an Attachment only against the party, or against the Judge only, or against both, at the election of the party who will fue. the Judge do dwell in one County, and the party mano ther County, then if he will have Attachment against both, he must sue forth several VVrits. And so it seemeth if he fue feveral Prohibitions against them, lie ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County.

And a man shall have an Attachment upon a Prohibition K against the Judge, if he resuse to receive the Prohibition,

and to admit of it.

And a Prohibition lyeth, if a man be fued in the L 47.by which Spiritual Court for the Collation unto a Grammar

it feemeth a Spiritual thing. 7 H. 41.

Vide 11H.4.

If a man fue for Trespass in the Spiritual Court, the M King or the party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or party, or unto them both.

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In some cases a man shall have a Prohibition when he is seed in the Spiritual Court for the Tithes of his Lands. As if a man be the Kings Tenant, and holdeth of him in chief by Knights Service, and is sued in the Spiritual Court for the Tithes of the Demean Lands, he shall have a prohibition, because that these Lands may come into the King shands by reason of VVardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged and therefore the same ought to be tried before the King in his Chancery.

And so, if a Bishop grant unto a Presentee of the Church of Lincoln the Tithes of his Demean Lands, to him and his Succe ors; now if the presenter be impleaded in the Spiritual Court for these Tithes, the King may grant a prohi-

bition; and the form is fuch;

Ren tale Judie salutem, &c. Monstravit nobis venerabil.
Pater Linc Episcopus, quod cium I Present in Ecclesia beate Mariæ Linc, tenest de dovo suo omnes Decim- Dominicarum terrarum surum, vel Dominici sui de N, quas id. Episc. predecess.
Sui Episc. loci predicti conjerr. consucurumt, Prior Santie
Katherinæ extra Lincoln clamans Decimas illas pertinere ad
Beclesiam ne B, trabit eum indè in Placitum, &c. Et quia pred.
Plicituratungit Coronam & dignitatem nostram, presertim
cim Collatio carund. Decimar. ad nos posit devolvè ratione
Castodie vel Flase', quia etiam consiniles Decimas conferimus
in quibusd. Dominicis, & similit. quamplures Magnates regni
nostri in Dominicis, tuosis prohibemus, &c.

Alfoa man may fue a prohibition directed unto the Sheriff, that the Sheriti do notiffer the King's Lay Subjects to come to any place at the Citation of the Bishop, ad faciend. ali juas Recognitiones, vel Sacram. prestand', nist in causis matrimonialibus & testamentariis. And the party may have thereupon an Attachment against the Bilhop, if he cite or diffrain any one to appear before him to take an Oath at the will of the Bishop, against the will of him who is so summoned or cited. And by that it appeareth, that those general Citations which Bishops make to cite men to appear before them Pro falute anime, withoutex- See 50 N. preffing any cause, are against the Law, and the party may have an Attachment against the Bishop for the same, and may fue a prehibition to to do. And if he do express any cause in the Citation, it seemeth by the VVrit before, that it ought to be for some Matrimonial or Testamentary cause.

If a man doth acknowledg in the Spiritual Court that he oweth

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And the Kingmay fue an Attachment upon the fame, F if they do proceed, &c. And in the time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Gardian of the Spiritualties, rejus Officiali & commiffariis. G And a Prohibition lyeth for Chauneries, Chappels, Prebends,

and Vicarages,&c.

If a man fueth another in the Spiritual Court for a Chat-H tel or Debt, the Defendant shall have a Prohibition, and the VVrit shall be; Probibemus vobis, ne ten. Placitum in curia Christianitatis de Catallis vel debitis, oc. And he may have a VVritunto the party himseif, that he shall not sue there, &c. and shall have an Attachment thereupon, if they tue there afterwards, &c. And also the King may the this V Vrit, and it may be directed unto the Judge and Party. And the

King may have an Attachment upon it.

If a man fueth another in the Spiritual Court for a Lay I fee, which is Land or Tenements, or the like, then he shall have a Prohibition, and the VVrit shall be; Prohibemus vobis, &c.nè teneatis,&c.de Laico jeodo Regis in S, unde queritur quod H. trahit eum in Placitum, &c. And he may have another VVritunto the party himself, &c. Ne seguatur, &c. and he may fue an Attachment uponit; and he may fue an Attachment only against the party, or against the Judge only, or against both, at the election of the party who will fue. And if the Judge do dwell in one County, and the party mano ther County, then if he will have Attachment against both, he must sue forth several VVrits. And so it seemeth if he fue feveral Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County.

And a man shall have an Attachment upon a Prohibition K against the Judge, if he resuse to receive the Prohibition,

and to admit of it.

And a Prohibition lyeth, if a man be fued in the L Vide 17H.4. 47.by which Spiritual Court for the Collation unto a Grammar it feemeth School.

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7 H. 41.

If a man fue for Trespass in the Spiritual Court, the M King or the party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or party, or unto them both.

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In some cases a man shall have a Prohibition when he is fued in the Spiritual Court for the Tithes of his Lands. As if a man be the Kings Tenant, and holdeth of him in chief by Knights Service, and is fued in the Spiritual Court for the Tithes of the Demean Lands, he shall have a prohibition, because that these Lands may come into the King's hands by reason of VVardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged and therefore the same ought to be tried before the King in his Chancery.

And io, if a Bishop grant unto a Presentee of the Church of Lincoln the Tithes of his Demean Lands, to him and his Succe ors; now if the presentor be impleaded in the Spiritual Court for these Tithes, the King may grant a prohi-

bition; and the form is fuch;

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Rex tali Judi? Salutem, &c. Monstravit nobis venerabil. Pater Line Eniscopus, quod cum I Prefent in Ecclefia beate Mariæ Line', teneat de dono suo omnes Decim. Dominicarum terrarum fuarum, vel Dominici fui de N, quas id. Epifc. & prædeceff. sui Epife. loci predicti conferr. consueverunt , Prior Sancte Katherinæ extra Lincoln' clamans Decimas illas pertinere ad Ecclesiam re B, trabit eum inde in Placitum,&c. Et quia præd. Placitum tangit Coronam & dignitatem nostram, præsertim cum Collatio carund. Decimar. ad nos possit devolvi ratione Cuftodia vel Fleaet', quia etiam confiniles Decimas conferimus in quibusd. Dominicis, & similit. quamplures Magnates regni nostri in Dominicis suis; vobis prohibemas, &c.

Alfoa man may fue a prohibition directed unto the Sheriff, that the Sheriff do not suffer the King's Lay Subjects to come to any place at the Citation of the Bishop, ad faciend. ali juas Recognitiones, vel Sacram. prestand', nisi in causis matrimonialibus & testamentariis. And the party may have thereupon an Attachment against the Bishop, if he cit, or diffrain any one to appear before him to take an Oath at the will of the Bishop, against the will of him who is so summoned or cited. And by that it appeareth, that those general Citations which Bishops make to cite men to appear before them Pro falute anime, withoutex- See so N. preffing any cause, are against the Law, and the party may have an Attachment against the Bishop for the same, and may fue a prehibition to to do. And if he do express any cause in the Citation, it seemeth by the VVrit before, that it ought to be for some Matrimonial or Testamentary

If a man doth acknowledg in the Spiritual Court that he oweth [417

If a man doth acknowledge in the Spiritual Court that is he oweth another man one hundred pound to pay to him at a day certain, and after doth not pay the fame, &c. if he be fued in the Spiritual Court for this Debt, he shall thereupon have a Prohibition: and so if he acknowledge in the Spiritual Court, that he ought to pay to such a one too Marks at such a day, &c. he shall not be sued in the Spiritual Court for that Debt; and, if he be, he shall have a Prohibition and an Attachment thereupon. But if a man, by reason of Marriage, or of a Will, doth acknowledge in the Spiritual Court that he ought to pay 100 Marks or any other sum at a certain day; then if he do not pay it according to his acknowledgment, he may be sucd in the Spiritual Court for the same, and a Prohibition will not lie.

Vide 22 Aff.

And if a man do acknowledge in the Spiritual Court to D pay a certain Debt at a certain day, and doth not pay it at the day, for which the other fueth hirain the Spiritual Court, and excommunicateth him there, because he did not pay it at the day; the other party shall have a Prohibition against him.

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If a man do recover a Debt in the Spiritual Court against E another, and after such there to have Execution; the party grieved shall have a Prohibition against the party and

the Judge, and an Attachment upon the same.

If a man be indebted unto the King, or bounden to render an Accompt unto him, and after his Executors are fued in the Spiritual Court for a Debt which doth not concern Matrimony or Testament; his Executors shall have a Prohibition against the Judge, &c. rehearing the special matter, &c.

Where an Abbot, or Eishop, or other person whatsoever, G such in the Spiritual Court, because he taketh Toll, or other Composition or Custome of his Tenants, &c. there the Party grieved shall have a Prohibition against him; or the King may sue this Prohibition and Attischment thereupon.

Where a man granteth parcel of his Mannor to another Parfon in Fee, to be quit of Tithes by Deed, and the Parfon with the affent of the Ordinary grants unto him, that he shall be quit of Tithes of his Mannor for this parcel of Land, &c. if he or his Assignee be afterwards impleaded in the Spiritual Court for Tithes of his Mannor, or any parcel of his Mannor, or any parcel of his Mannor, or any parcel of the Mannor, he or his Assignee shall have a Prohibition upon that Deed: and if the Deed were made before time of memory, and so had continued

Vid. Br.Prefeription 603. tinued to be quitted of Tithes of his Mannor, he shall have a Prohibition, if he be impleaded for the Tithes of that Mannor, or any parcel thereof, upon the matter shewed.

If a man sue any Prohibition to any Spiritual Court, and the Judges will not receive the same, or will not allow it, and because he bringeth the Prohibition, they make a Citation against the party, to answer before them for the same cause, now he shall have a new Prohibition upon the matter, directed unto the Judges there, &c. And also he shall have an Attachment thereupon, if they proceed against him in their Court. And it is not material whether the Prohibition were sued legally or erroneously, because he shall not be punished for suing a Prohibition in the King's Court.

A man deviseth Lands in London in Mortmain, and by reason of this Devise the Abbot, or he to whom the Devise is made, such for these Lands, or for any parcel thereof, in the Spiritual Court by Colour of the Devise: the party

grieved by this Suit shall have a Prohibition.

And if a man fue another in the Kings Court in Trespass for Battery, or taking of his goods, and afterwards is Nonfuit, and discontinueth the Suit, for which the Defendant sueth him in the Spiritual Court for Defamation, &c. he who hath sued in the Temporal Court shall have a Prohibition against him, and an Attachment thereupon, if he sue again in the Spiritual Court; and also shall have such Prohibition unto the Judge, and Attachment against him, if he hold Plea therein after the Prohibition delivered unto him.

Where a Composition is made by Deed indented at the time of the Avoidance of a Prior, that an Abbot shall nominate six persons, and that the other shall elect one of them to be Prior unto the Ordinary; now if he who presented to be sued in the Spiritual Court, because he hath presented one unto the Ordinary for to be Prior, he shall thereupon have a Prohibition against him who sueth there. And if the Sub-prior and Covent sue in the Spiritual Court to avoid such Presentment, he shall have a Prohibition against the Judge. &c.

And also the King may have a Prohibition directed unto 8 Aff. 292 the Ordinary, that he shall not visit the Hospitals which are Br. Affize of the King's Foundation, or of the Foundation of his 138, Predecessors, because that the Chancellor of England ought for to visit them, and no other. And so is it of the King's or his Progenitors free Chappels, no Ordinary shall visit

them, but the Chancellor of England, &c.

Where

6 H.7. 14. 8 Aff. 29. Br. Affize 138.

Where a common person is the Founder of an Hospital, B Keble, vide which is donative by his Letters Patents, and doth confift all in Temporalties, if the Ordinary will vifit such Hospital, the Founder shall have a Prohibition against him; or if the Ordinary will cite any of the poor men to appear before him for an Hospital cause, or to remove him, the Founder, or his Heir, shall have a prohibition. And such Hospital may be appendant unto a Mannor, as well as the Advowson of a Church.

> And if a man recover his Presentation by Quare im-C pedit, and hath his Clerk admitted and inflituted, and another person who claimeth the Advowsion by provision from the Pope fueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Presentment, &c. shall have a Prohibition unto the Judge

for to furcease.&c.

So if the King hath Title to present unto an Advowson, D by reason of a Ward who is in the King's hands, and after the fix months past presenteth his Clerk, who is admitted and instituted, and the Bishop present his Clerk before to the same Church for Lapse, who was admitted and instituted, &c. by reason whereof the Bishops Clerk sueth the Clerk, who was presented by the King in the Spiritual Court; the King's Clerk shall have a trohibition directed unto the Judges, &c. that they shall not proceed in the Plea, &c.

If a man fueth a Prieft or a Monk, or Canon, or Clerk, E. See the Sta- in the Temporal Law, in Debt or Trespais, and cause him to be arrested by his body; if they sue for his Arresta Citation in the Spiritual Court de violenta manuum injectione in Clericum, the other shall have a Prohibition directed unto

the Judge.

tute 9 E.z.

Articuli

Cleri.

If two men are fworn to give evidence unto a Jury, and F do fo, for which certain persons are indicted; if they who are indicted fue them in the Spiritual Court who gave evidence for Defamation, they shall have a Prohibition.

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Where a man fueth in the Spiritual Court for Spiritual G causes, and the Defendant purchaseth a Prohibition direded unto the Judges there, and delivers the fame, and for fo doing the Judges do excommunicate him for the offence he did to the Church, in bringing a robibition to them upon a Spiritual Cause; the party Excommunicate shall have a new Prohibition upon that matter, commanding them for to revoke the same For a man shall not be punished for fuing forth Writs in the Kings Courts, whether he have right or wrong. If

If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants, or the Chancellor, or any or his fervants, be fued in London before the Major or Sheriff for Trespass, they shall have a Superfedeas directed unto the Major for to surcease, and bid the party fue in the Chancery, if it be needful for him. Videa H. a. And there are divers forms of these Writs in the Register; Prohib. 15. and one Writ reciteth, that this Custome and priviledge vid.43.D. was confirmed by Authority of Parliament, Anno 18 E. 2.

If a Woman hath Title to fue a cui in vita, and she fwear unto the Tenant, that she will not sue the cui in 11 H4.28 vita against him; if she afterwards sueth forth the Writ, for which the Tenant tueth her in the Spiritual Court for breach of her Oath, the thall have a Prohibition, because

the Oath toucheth a Temporal thing, viz. Land.

If two feveral fatrons present severally to the Bishop, and thereupon one fueth a Q are impedit or a Darrein Prefentment against the other, and recovereth. and hath his Clerk admitted, for which the other Clerk fueth the Clerk who recovere the by Appeal or otherwile, in the Archbishops Court, because that he was not admitted at the presentment of his atron; the Patron who recovereth shall have a Prohibition directed unto the Archbishop, &c. or against the C'erk that fueth there for that cause, that he do not fue for that cause, &c.

And so is it if the Patron be disturbed by the presentment of a Stranger, and the Disturbers Clerk sueth the very Patrons Clerk in the Spiritual Court; or contrary, the Clerk of the rightful fatron sueth the Clerk of the Diflurber in the Spiritual Court; he who is grieved shall have

a rohibition.

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And if the King do collate unto any Prebendary, or recovereth the Collation unto any Prebendary, and hath his Clerk admitted, and afterwards the Clerk who is vexed fueth in the Spiritual Court, by means of Appellation, or Commission, or other cause, by which the Title of the Collation may come in debate; the King shall have a rohibition directed unto the Judges where the Suit is, commanding them that they do not proceed. And if the King N do recover his Collation or Prefentation unto any Church, and after Execution of the Judgment is diffurbed by Ap-

peals, or Citations, or other fuch means, or if that after the Clerk be inducted, the King's Clerk be vexed by Appeals, or Committions, or Citations in the Spiritual Court for this cause; then the King shall have a Writ, directed

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unto all Sheriffs, Maiors, and other Officers, to take and arrest the bodies of those who made such impediments, to disturb the Execution of the Judgment, or of such Prefentations or Collations made by the King; and also shall have a Writ of Prohibition unto the Bishops and their Officers, that they do not any thing in derogation of his Prefentment or Collation, or of the Execution of the Judgment given for the King. And also the King may sue such Prohibition directed unto the party himself who such such Appeals, Provocations, Citations, Instruments, or Process, &c. that they do not sue such, or permit such Appellations, Provocations, or Impediments to be. And the King shall have Attachment upon that directed unto the Sheriff, &c. if the party follow or suffer such, &c. to be sued contrary to that Prohibition.

If the King do recover his Prefentment unto a Church, A and hath a Writ unto the Bishop, &c. to remove the others Incumbent, for which the Incumbent such an Appeal in the Archbishops Court,&c. by reason whereof the Archbishop sendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any thing to be done by others, in derogation of the Crown or of the King's right; and shallhave another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Process or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohi-

bition directed unto him.

And it appeareth by the Regifter, that another common B person who recovereth his Presentment, or hath title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in possession by such recovery, and is after disturbed by another with sorce and arms, that he cannot take the Tithes and profits of the Church, he shall then have a special Commission directed unto the Sherist, and other the King's Officers, to take such persons, as well within Liberties as without, and to carry them unto the Gool, there to remain till they have other

command from the King.

And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and industed

ducted; if the Bishop at the sute of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of Rome, or elsewhere out of the Kingdom; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it feems that the King shall have a Prohibition without any Recovery had before, if his Presentee be instituted, &c. And fo it feems a common person shall have and sue such a Prohibition, when the Suit is to try the Title of the Prefentment or Collation; yet the Writs in the Regulter are and speak of a Recovery.

If a man make oath to infeoff me before such a day, &c. 11 H 4.8; if he do not infeoff me, I cannot sue him in the Spiritual perional Court for breach of his cash, because the third which the perional Court for breach of his oath, because the thing which is to things. be done is a Temporal act, and shall be tried at the 4 H.3. Pro-Common Law, whether he hath done it or not; and there- hibition 15 fore if he be fued in the Spiritual Court for that cause, he See 42 F. E shall have a Prohibition. And if a man be sued in the Spi- 2 E.4.10

ritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he shall have a Pro- 4 E.4.37 hibition directed unto them for to furcease, &c. until they have delivered the Copy of the Libel, according unto the Statute made Anno 2 H.5. And also the Defendant may have an action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the cause in the Libel be a Spiritual cause or not.

If a man maketh a Devise of Lands or Tenements devisable, the party to whom the Devise is made shall not sue in the Apion. Spiritual Court to have the Landsor Tenements so devised; 46 E.3.32. but if he do, the other party shall have a Prohibition. But & H. 8. Proif he deviseth Goods or Chattel's real, as a Term for years, hibition 19. or a Ward; there he may fue in the Spiritual Court for fuch things.

If a man fueth in the Common Pleas for Trespass, if he 13 H.6. Profue him in the Spiritual Court for the same cause, he may hibition 3. flew the matter in the Common Pleas, and shall have a Pro- 4 E.4.37. hibition from thence directed to the Judges,&c. And so al- 38 H.6.14. wates when the matter is depending in the Common Pleas, if he sue for the same cause in the Spiritual Court he shall

have a Prohibition out of the Common Pleas.

But a man shall have a Prohibition out of the Chancery 31 H. 8. Bt. or Kings Bench upon his Surmife, furmifing that he is fued in Prohibition the Spiritual Court for a Temporal cause, &c. although he 17 be not fued in the Kings Bench, or otherwhere, for that caule.

Vide

If a manfue a Quare impedit, and deliver it of Record, I as he may, and afterward the Defendant, or his Clerk, fue a Citation against the Presentee of the Plaintiff; the Plain-2 E.4.11. tiff in the Quare impedit shall have a Prohibition in the 18 H.S.5. Common Pleas, before the return of the Writ of Quare impedit, because it appeareth on Record that such a Quare im-

pedit is depending.

If a Parson grant to one by Deed, that he shall be dis- K charged of Tithes of his Lands, and afterwards he fueth in the Spiritual Court for the Tithes, &c. it is faid that he shall not have a Prohibition, because he may pretend this matter in the Spiritual Court, to discharge him of the Tithes. But if it were upon a Composition made before time of memory, and now the Parson sueth for the Tithes of those Lands, there he shall have a Prohibition against the Parson, &c. Quere the diversity, for I think he shall have a Prohi-

bition in both cases. The case is M. 8 4.14.

If a man promise one 101. if he will marry his Daugh- A 305, & 309. ter; if he marry the Daughter, and the other will not pay the mony, he shall not sue for the same in the Spiritual Court. But if he promise one with his Daughter in marriage 10 l&c. if he doth marry the Daughter, and he do not pay the mony, he may fue in the Spiritual Court for the 10 l. because it concerneth Matrimony with diversity. See

in 22 E.z.lib Aff.

If the Testator charge his Executors to pay his Debts to B his Creditors, if they do not pay them, the Creditors may fue in the Spiritual Court; and they shall not have a Prohibition, for that this charge of the Testator is as a Devise unto his Creditors: quod vide H.9 E.3. Prohibition 17.

13 H. 3. Prohib.21. Vide 139.

If a man giveth Goods in marriage with his Daughter, and C afterwards they are divorced; the Wife may fue in the Spiritual Court for the Goods, and no Prohibition will lie thereof.

If a stranger do disturb the Executors to perform the D Will, they may fue him in the Spiritual Court, and no Prohibion lieth against them for so doing. T.4 H.3. Probibit. 28. acc.

If a man fueth a Prohibition because another draweth 4 E.3.27,29. him into the Spiritual Court for an Advowson of a Church, &c.upon the Attachment upon the Prohibition fued he may declare, that he did deforce him of great and fmall Tithes,

> If one Parson sueth another Parson in the Spiritual Court E for Tithes of the profits arifing in one hundred acres of Lands within the bounds and limits of his Parish being,

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Vide Com . 37 H.6.8. 45 E.3. 24. Vide 50. S. 22 Aff.70. 17 E.4.4. 15 H.3.

Prohib.22. 16 H.3. sbid.24.

Prohib.z.

for which the Patron of the other Parson purchaseth an Indicavit unto the Spiritual Judge for to surcease, &c. then may the Parson who sueth in the Spiritual Court come into the Chancery, and have a Writ unto the Bishop for to enquire of the value of the Church, according to the Taxos Tithe now currant, as upon the value of the Tithes demanded, and to certifie the King in the Chancery thereof by Letters under his Seal, with the Writ: and it seemeth he ought so to do before he have a Consultation granted in that case.

If a Bishop will cite or compel the Kings Chaplains, or the Masters of the Chancery, which are the King's Chaplains, to make their personal Residence upon their Benefices when they are Attendants in the Kings service, they may have a Prohibition unto the Bishop, &cc. and upon the same an Alias, Pluries, and Attachment. But if they be not attending in the Kings service, then the Ordinary may compel them to make personal Residence upon their Benefices;

and the form of the Writ is fuch :

Rex venerabili, &c. Cùm Clerici nostri ad faciend in Benesiciis suis Residentiam personaliter, dum in nostris immorant. obsequiis, compellari alias, super hoc molestari seu inquietari non debeant; Nos, ac Progenitores nostri quond. Reges Angl', bujusmodi Libertat. & Privileg. pro Clericis nostris à tempore quo non extat memoria semper hactenus usi sumus: vobis mandamus, quod dilect. Clericum nostrum, Personam Ecclesia de B, &c. qua per praceptinistrum in Cancell. nostra nostris jugit. intendit obsequiis, ad personalem Residentiam in Benesic. suo, &c. dum in eisdem obse-

qui is nostris immorat', nullatenus compellatis, &c.

And if the Kings Chaplain be chosen Dean of any Church, which Office requireth personal attendance and Residence, and the Bishop will compel himtotake the Deanry which requireth that personal Residence, by Spiritual Censures and Citations, &c. then he shall have a Prohibition unto the Bishop by these words: Vobis district. prohibemus, no ipsum A ad Residentiam aliquam in Benesic. Suo faciend, seu assument officium prod, vet aliquod hujusmodi Residentiam requir, dum obsequiis nostris prod. sic intenderit, quoquo modo compellatis; & Sequestr, si quod in succious aut aliis bonis Ecclesic dicti Clerici nostri per ipsum Episcopum aut suos ea occasione appositum siner', sine dilatione sac. relaxari, &c. And so it the Clerk abide in the Kings service in the company of our beloved and trusty Ros P, in the parts of Gascony.

And foif the Eishop will amerce the Kings Chaplains, and compel them to pay a certain sum of mony for Non-resi-

dence, they shall have a Prohibition.

Vide Statut. Artuuli Cleri, cap, 2.

If one fue another out of the Realm for debt, or other H cause, whereof the Kings Court may have conusance, he shall have a Prohibition against him, and an Attachment upon the same, if,&c. And so if one Clerk sueth another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition: And the King may fend a Writ to him who is fo fued out of the Realm, commanding him upon pain of forfeiture of so much as he may forfeit, that he go not out of the Realm for to answer thereunto, whereof the conusance doth appertain unto the King's Court. And also the King may send unto the Prebend, if he be fued out of the Realm for Title of the Prebendary, to prohibit him, upon pain of Imprisonment, and of forfeiture of what he may forfeit, that he do not go out of the Realm, nor answer there by his Proctor, or otherwise, &c.

And if any man do purchase from the Court of Rome I any Citation against any Clerk, or others, directed unto the Archbishop of Canterbury, or unto others, to cite such perfons to appear before the Poge,&c. and to answer for the Collation or Presentation unto any Benefice or Prebendary; then the King shall send his Writ of Prohibition unto the Archbishop, or other to whom such Process is directed, that they do not cite,&c.and may have another Prohibition to the party himself, and an Attachment upon the same, &c.

And when a Confultation is once duly granted, then the A Court may proceed in the Spiritual Court, notwithstanding that the party purchase a new Prohibition directed unto them, if the Libel be not changed : quod vide by the Statute of 50 E.3.c.4.

The Writ of Prohibition which is called Indicavit most B commonly lieth between four persons, whereof two are Patrons, and two Clerks, and properly lieth where one Clerk fueth another in the Spiritual Court for Tithes which do amount unto the fourth part of the value of the Church at the least; for if it doth not amount unto the value of the fourth part, but unto the fifth part, the Indicavit doth not lie. And this Writ lieth for the Patron, and that Clerk who is fued in the Spiritual Court: and this Writ may be fued as well against the Judge as the party. And the King may fue this Writ where his Clerk is impleaded for Tithes amounting to the value of the fourth part of the Church, or of the Church it felf. And this Writ of Indicavit lieth as well for the Patron, where his Clerk is impleaded for the Advowson it self, or such Vicarage, Prebend, or Chappel, as well as if he were impleaded of

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the Tithes of the Church, Vicarage, Prebend, or Chappel. And it appeareth by the Register, the Writ of Indicavit which the King shall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making mention what

is the value of the fourth part, is such:

Rex Officiali Episcopi, &c. & ejus Commissariis satutem : Cum A de B, Persona Ecclesia de W, teneat omnes Decimas provenientes de Marisco, &c. de Advocatione nostra, Abbas de Bello, clamans eas pertinere ad Ecclesiam suam de, &c. trahit eum in Placit', &c. Vobis probibemus, &c. utrum ad nos an ad præd' Abbat. pertinet earundem Decimarum Advocatio, quia Placita, &c. And this Writ of Indicavit ought to be fued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there the Indicavit is void.

And a man shall not have an Indicavit before the party in the Spiritual Court hath libelled there against the Defendant; and the party who fueth the *Indicavit* ought to thew the Copy of the Libel in the Chancery, before he 31 H.6.13. have the Indicavit. And when the party hath libelled in the Spiritual Court, and the party is put to answer, then it is called and faid, that the Suit is contested in the Court

of Christianity.

And Indicavit lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowson; and that for a common person, as well as for the King. And the Writ of Indicavit shall not mention that the Tithes and Offerings which are in fuit do amount unto the fourth part of the Church, but Decimas provenientes de centum acris terresor of fuch a Mannor: and if these Tithes be not to the fourth part of the value of the Advowson, the 4E.3.27 other party may alledge and furmife the fame, and have a tion I. Confultation.

And also Indicavit lieth where one party is Parson imparionce, and the Clerk of the other Patron fueth him in the Spiritual Court for Tithes, &c. he may fue the Indicavit. And so if an Abbot be Parion imparsonee of a Church, and another Abbot is Parlon imparlonee of another Advowlon, and one fueth the other for Tithes appertaining to his Advowson, amounting unto the fourth part of the Church, &c. the other shall have the Indicavit against him.

And if an Abbotbe Parson imparionnee of an Advowson, and hath a Vicar endowed; then if the Parlon be fued in the Spiritual Court for the fourth part of the Tithes of his Parsonage, he shall have Indicavit. And so if the Vicar be fued for the fourth part of the Tithes and Offerings of his

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Vicarage, the Parson, or he who is Patron of the Vicarage, shall have the *Indicavit*, because they are several Advowsoms; the Parsonage one, and the Vicarage another; and there may be divers Patrons of them. Quod vide Pasch. 31 H.6. in Title indicavit.

If Bailies, Maiors, or others, who claim jurisdiction to F arrest a man upon a Plaint before them, or to attach his Goods, &c. do arrest one for Trespass or Contract who was not within their jurisdiction, the party arrested, &c. shall have a Prohibition directed unto them, &c. and the form is such:

Rex Ballivis A de N salutem. Cum de communi confilioregni nostri provisum sit, quod non liceat alicui de eod. regno, nis nobis, & ministris nostris specialem authoritatem ad hoc habentibus, aliquos per Ballivam seu potestatem sum transeuntes attachiar, ad respondendum alicui super contract, conventionibus, seu transgr. aliquis extra eand. Ball. seu potestat, sactis, Vobis præcipimus, quod non attachiatis B ad respondend. alicui coram vobis in Ball. vestra super bujusmodi contractibus; conventionibus, seu transgr, contra sommam provision. præd; Distriction, se quam inde seceritis, deliberari saciatis, &c. And if they will not obey the same, he shall have an Attachment against the Bailies. And this Writ lieth as well upon Attachment of Goods, as for arresting of the Body.

If a Woman have Lands which she holdeth in Dower, or G of joynt purchase with her Husband, or of her own inheritance, if the Sheriff have Process out of the Exchequer to levy the Husbands Debts which he oweth unto the King; or if the Sheriff have Process out of another Court to levy Debts due by her Husband to another person; if the Sheriff will distrain in the Lands which the Wife holdeth, &c. the Wife shall have a Writ unto the Sheriff, that he do not distrain the Wife who holdeth such Lands, in the same Lands, for the Debt of the Husband; and the form of the Writ is

fuch:

Rex Vic. &c. Chm secund. Legem & consuctud. regni nostri mulieris in Terris & Tenementis quas tenent in dotem de dono virorum suorum, vel quae sunt de hareditate sua, vel quas sibi acquissiverunt, pro debitis virorum suorum reddend. distringi non debeant; ac tu B, quae suit uxor A, distring. in Terris & Tenementis suis, quas tenet in dotem ex dono esusa. A, & et etiam quae suer. de hareditate ipsius B, ac ex quasito ipsius B, sicut ex gravi querela sua accepimus: Tibi pracipimus, quòd ipsam B in Terris & Tenementis suis quas tenet in dotem, vel qua sunt de hareditate sua propria vel ex quasit. ipsius B, pro debit. praci. A, quondam viri sui, reddend. non distringas vel distringi fac.

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contra Legem & consuetud. pradict', & Districtionem, si quam.

And there is such a Writ unto the Sheriff, where Process cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, per summ. Scaccarii, &c. And in that case the may sue a Writ unto the Barons of the Exchequer, that they surcease to make out such Process to the Sheriff to distrain the Wife in such Lands, &c. Another form of Writ unto the Barons of the Exchequer, to surcease for to distrain the Wife, &c. and with a Provision the same Writ, that they levy the Debts of the Husbands Executors, or of his Heir, or of the Lands and Tenements which were the Husbands, &c.

And if a man sue another in the County-Court for Debts or Chattels which do amount to the sum of 40 s, then the party shall have a Prohibition against him who is Sherist, that he shall not hold Plea thereof, and that he tell the party that he sue in the Common Pleas; and the Writ is such:

Rex Vic', &c.Cum Placita de catallis & debitis quæ summam quadraginta solidor. attingunt, wel eam excedunt, secundum Legem & consustud. regni nostri sine Brevi nostr. placitari non debent; ac A,B de debit.centum solid. in Com.tuo sine Brevi nostro implacitavit, ut accepimus: Tibi precepimus; quod si ità sit, tunc Placito illo in Com. præd. sine Brevi nostr. ulterius tenend. supersed. omnino, & præs. A dicas ex parte nostra, quod Breve nostrum de prædist. debit. versus præd. B sibi impetret, se sibi videret expedire. Teste, &c. And if such Writ be sucd in another Court, then the Writ shall be directed unto the Baily of the Court, in such form:

Rex Ballivis I de N, vel Ball. suis de N, salutem. Cum Placita, &c. [usque ibi, non debeant] ac A, B de eo, quod idem B redd. pref. A catall. ad valentiam decem librar. coram nobis in Curia diété Dom. vestri de N, vel in Curia nostra de N, sine Brevi nostro implacitet, ut accepimus; Vobis pracipimus, quod si ità sit, tunc Placito illo, &c. ut suprà. And if they do not surcease upon this Writ, then he shall have Alias and Pluries, and Attachment against them, and also an Attachment against the party himself.

And if a man do owe unto another man five marks, and he fue feveral Plaints for the fame in the County-Court or in any other Court against the Debtor, he shall have a Prohibition thereof, and rehearse the matter, and that he would defraud the King's Court of its Jurisdiction, and also the party of his answer, &c. commanding them that they do not proceed, &c. and that he command the party to sue at the Common Law in the King's Court; and if they will not M. q. furcette

furcease, he shall have an Alias and Pluries, and Attachment upon the fame, &c.

And so it is if a man will sue in the County-Court a Writ of Covenant or Trespass, unto his damage of forty shillings or more, the party shall have a Prohibition for to surcease, and

thereupon an Alias, Pluries, and Attachment,&c.

And so if the Executor sueth in the Country, or in a Court-Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease, &c. and if he have Judgment in any of the Plaints fued for parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment cease for the residue.

And also if a man sue in the County a Plaint of twenty pounds, and hath Judgment to recover in that Court; yet the Desendant may sue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Jurisdiction.

And so after Judgment given and Execution awarded in the County, or in other Court-Baron, which hath nor power to hold Plea of Debt of the fum of forty shillings, &c or of Damages in Trespass amounting to such sum, or more, the party Defendant shall have a Writ of Prohibition unto the Bailies, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have diffrained the party to make satisfaction, that then they release the Distress, and that they revoke what they have done therein.

There is a Rule in the Register thus: Si Placita de catallis A rel debitis que summam quadraginta solidorum attingunt, vel eam excedunt, in Com' vel in alia Curia, fine Brevi placitent'. quod absit, non frat inde Breve de falso judicio, nec Recordare, nec Breve de Executione Judicii; exceptis Cur. Civitatum, or alies que fecunaim consuetud.hujusmodi Jurisdictiones habent,

8 E.4. 15. Influeres liath without Lassieson.

T47.7

And if a man fueth another in the County or other Court R upon a Plaint of Trespass Vi & armis; the Desendant may fue a Prohibition unto the Sheriff, or unto the Baily, in Ys & armis ruch form:

> Rex Ballivis de B.&c. Cum Placita de transgr. contra pacem nostram in regno nostro Angl' vi & armis factis, secundum Legem & consuet. ejusd. regni, sine Brevi nostro placitar. non debeant, ac W implacitat. coram vobis in Eur-prædict. Domini.

zeftri

vestri R de T, de diversis transgr. eidem W per prefat. R, contra pacem nostram, vi & armis (ut dicit.) factis, ut accepimus, in ipsius W grave dampnum, & contra Legem & consuct. prædi: Vobis præcipimus, quod si ita sit, tunc Placita prædict. coram vobis ulterius tenend. supersomnino, præs. W dicentes ex parte nostra, quod Breve nostrum de Transgr. præduversus præsat. R sibi impetret, si sibi viderit expedire. Teste, & & G.

B And if one man fueth another in a Court-Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Free-hold, he shall have a Prohibi-

tion, and the form is such:

Rex Ballivis de R de P salutem. Cum Placita de Detentione chartar. seu scriptor. Liber. Tenement. tangentium in aliquibus Cur. quæ Record. non babent, secundum Legem & consuet. regni nostri, sine Brevi nostro placitari non debeant, ac E, W, de eo quod id. W redd. præf. E tres Chartas, coram vobis in Cur. præd. Domini vestri de P, sine Brevi nostro implac, ut accepimus: Vobis præcipimus, quod si ita sit, tunc Placito illo coram vobis in Cur. præd. sine Brevi nostro ulterius tenendo supersomnio; & præs. E dicatis exparte nostra, quod Breve nostrum de Detentione Chartar. præd. versus præs. W sibi impetret, st sibi viderit expedir. Teste, & c. An. 8. Apud Ebor. istud Breve ordinat, suit per Concilium.

# Quare non admisit.

The Bishop to admit his Clerk, and he will not admit him; then the party may sue an Alias and a Pluries, or Attachment, &c. or may sue a Writ out of the Chancery, or out of the Common Fleas, at his election, de Quare non admistr, as well in the Term-time as in the Vacation; but the best is in Term-time to sue in the Common Pleas: and in this Writ it behoveth him to certise the Recovery. And the form of the Writ of Quare non admisst for the King is such:

Rex Vic., &c. Sum, &c. A, Winton. Epife, &c. quod ste coram nobis tali die, &c. ubicunque, &c. Quare chin nos nuper in Cur nostra coram nobis recuperassemus, &c. And he shall not fay in the Writ, Si sex secerit te securum, because the King shall not find Pledges, &c.

And if the King do recover his Presentment in the Common Pleas, yet he may sue a Quare non admissi in the Kings

Bench before himfeif.

And foif a common person do recover in a Quare impedit in the Common-pleas, and the Record is removed by a Writ of Error into the Kings-bench, and there affirmed; then he shall have a Writ unto the Eishop here, and ought to sue Quare non admisit against the Bishop there upon the Record, otherwise not. After the Record removed by a Writ of Error, the Plaintiff who recovered shall not have Quare non admisst untill the Judgment be affirmed in the Kings-bench.

And the Quare non admisit ought to be sued in the County where the Bishop refuseth the Plaintiffs Clerk.

And in the Quare non admifit he shall recover only dama-G ges, and shall not have his Clerk admitted by this Writ.

And if the Bishop hath admitted and instituted him, and H the Archdeacon will not induct him, he hath no remedy but only in the Spiritual Court, as it is faid; for it is a good Plea for the Bishop to say, That he admitted the Clerk, and sent his Letters unto the Archdeacon for to induct him. conceive that if the Archdeacon will not induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a temporal act. As if the Sheriff upon Habere facias seisinam will notadmit him into possession, he shall have an Alias, and Pluries, and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; for perhaps he may alledge a special cause, for which by the Spiritual Law he ought not to be inducted, which cause cannot be determined in the Temporal Court. Ideo que-And if the Vicar-general do refuse to admit the Clerk, the

Vide 21 H.7. 3.A man re- Quare non admist shall be brought against the Bishop for that covered in a refusal; and if the Bishop do refuse the Clerk, and afterwards Quare imdieth, Quare non admisit is maintainable against the Gardian pedit, and of the Spiritualties for this refulal made by the Bishop. Tamen had a Writ quere. to the Bishop, Who returned.

The Bishop is not bounden to admit the Clerk, if the K Church be full of the Presentment of another party who is not party to the Recovery.

that the Clerk who If the Bishop doth refuse the Kings Presentee, and doth I. was in had afterward admit him, yet the King shall have Quare non refigned, and that the admissit against him for that refusal; and so shall a common Church was person in like manner have, as I conceive.

the Presentment of J H; and upon that Return the Plaintiff had a Scire facias against the Bishop: and after the Return the Opinion of the Court was, that he should have Quare non admifit.

# Quare incumbravit.

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M Ina Quare non admist the Bishop may say, that he did present for Lapse.

And Quare non admist was maintainable against the Bi-

Shops Official, Mich. 9. E. 3.

F

G

H

A If a man do recover in a Quare impedit his Presentment unto a Chappel which is donative, then I think that he shall have a Writ unto the Sheriff to put the Clerk who recovered into possession.

And in a Quare non admisst the Bishop may say, that the

Church is litigious betwixt two, &c.

If a man hath a donative Chauntry, which is of the nature that one name unto another his Clerk, and that the other shall institute and induct himsthere is the who hath the Nomination be disturbed, he shall have a Quare impedit; and is the do recover, he shall have a Writ unto him who ought to instal and induct himsto put him in possession. But is the be disturbed by him who ought to install himsthen he ought to have a Quare impedit against himmand after that he hath recovered he shall have a Writ to him who dissurbed himsto put his Clerk into possession; or he shall have a Writuntothe Sheriss, to put the Clerk of him who recovered into possession, at his election.

#### Quare incumbravit.

D Quare incumbravit ought to be fued in the County where the Church is, because the wrong is done there.

E And Quare incumbravit doth not lie but where the Plain- 17 E. 3. 74 tiffrecovereth by Judgment of Court. And the King may fue a Quare incumbravit in the Kings Bench, although the Record of the Recovery be in the Common Pleas; but a common perfon cannot do fo.

And Quare incumbravit may be fued in the Common Pleas, 17 E. 3. 74. although the Record be removed in the Kings Bench by a for all. Writ of Error, or in the Treasury; but if the Record be in the Kings Bench, it seemeth then that the party shall sue the Quare incumbravit there, &c.

And Quare incumbravit is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.

H And Quare incumbravit doth not lie until the party hath fued the Writ of No admittas unto the Bishop: for if the Bishop do incumber the Church before the Writ of No admittas such, then the party shall have a Quare impedit, and not Quare incumbravit; for the Bishop cannot have notice until the No admittas be delivered unto him. And if the Bishop, after the No admittas delivered unto him, do admit his

his Clerk for whom it is found by the Jure Patronatus, yet the other party shall have Quare incumbravit against him. And in Quare incumbravit he shall have judgment to recover I damages, and also his Presentment. But so shall he not have in Quare non admissit, but only damages.

And in 21 E. i. it was adjudged, that a man shall have K Quare incumbravit without making mention of any Recovery in the Writ, or in the Court. But by the Rule of the Register he ought to mention the Recovery; and that seems to

be the better Opinion.

And after the Ne admitt as delivered, if the fix months pass, I the Bishop may present his Clerk for Lapse, and shall not be charged by the Quare incumbravit for that Presentation; but it seemeth he cannot admit the Clerk of the other man after the fix months pass, for that shall be against the Write of Ne admittas delivered unto him. And also if the Bishop do present the Clerk of the other party after the fix months, who had presented unto him before, that Presentent maketh Title to the party, although it be after the fix months; by which it seemeth that the Quare incumbravit lieth then for the party.

And if the Plaintiff be Non-fuit in Quare incumbravit, he M may fue a new Quare incumbravit, and may vary from his Count upon the first Writ. And it is a good Issue, that he did N not incumber, &c. after the Prohibition delivered unto him.

And if a man hath a Quare impedit depending, and he fue Q a Ne admittee to the Bishop, and afterwards the Bishop do incumber the Church within the fix months with his Chaplain, or with the Defendants Chaplain; then the Plaintiff shall have Quare incumbravit, and the form of the Writ shall be such.

Rex Vic. Linc. salutem. Si A fecerit, &c. tunc sur. H, Linc. Episc', quod sit coram Justic', &c. oftens. quare cum idem A in Cur. nostra coram press. Justic. recuperastet versus B Presentac. suam ad Eccles. de I, per cons. Cur. nostre pred', idem tamen Episc', pendente Placito in pred Cur. coram press. Justic', eandem Eccl. incumbravit, in ipsius A dampaum non modicum & gravamen, & contra Legem & consuet. regni nostris & habeas ibi. &c. Teste. &c.

And if he do not appear at the Return of the Writ of In-peumbravit, nor at the Alias, then the Distring as shall be in the end, In nostri ac mandator, nostror contemptum manifest, & you furtain on Cur, nostre enervationem manifestam: & habeas ibi, & c.

And if a man hath a Writ of Right of Advowson depending betwixt him and another, and the Church void pendant the Writ, the Plaintiff shall not have Ne admittas to the Eishop, nor the Writ of Quare incumbravit, although

rheSucceffor

the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Advowsor; and if he hath Title to present, he may present, and have a Quare impedit if he be disturbed.

# Juris utrum.

I Juris utrum is a Writ of the highest nature that a Parson can have and he shall have this Writ where the Lands or Tenements are aliened by his Predecessor, or if a Recovery be Forescue. It had against the Predecessor by Default, or by Reddition, or Annuary be for want of Pleading of the Predecessor, where he hath not prayed in aid of the Patron and Ordinary, But if he do pray Parson, his in aid of the Patron and Ordinary, and they joyn in aid, and Successor render the Land, or consess the Action, then the Successor of shall not such a Parson shall not such a Parson shall not such a Parson shall not lands, or Tenements, by Verdict, and the Parson doth not pray in aid of the Patron and Ordinary, yet his Successor shall have a Juris utrum, and shall not be put to a Writ of Attaint.

And if a man intrude into Lands and Tenements after of the posthe death of a Parson, the Successor shall have this Writ session of suris utrum: and so if a Parson be differsed of Lands and Successor; but a charge

Ihall have a Juris utrum.

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And also a Parson may have an Affise of Lands or Te-which shall nements of his Rectory, or a Writ in the Quibus, in the nabind him ture of an Affise, or a Writ of Entry in the Per, or Cui, or in the Post, upon a Discrim made to himself, but not upon a Discrim made to his Predesessor, but shall be put to sue a Juvis utrum, &c.

Also a Parson may have a cessavit, if his Tenant who vide 57. a holdeth of him cesseth, &c. or a Writ of Escheatry, if his Tenant die without Heir. And by the Statute of west. 2. he

may have Quod permittat of common Pasture.

And if a Parson with the assent of the Patron and Ordina-Vide 50.H. ry leaseth his Globe-lands for life, and the Tenant alieneth in Fee, or sofeth by Desault; it seemeth the Parson who leased the Land shall have a Consimili cass during the life of the Tenant for life; and after the death of the Tenant for life, a Writ of Entry and Communen Legem.

And if an Abbot or Prior be Parson imparsonee of a Church, and alieneth the Land of the Rectory, his Successfor shall have a Faris attract to recover the Land, and not

other Writ, because he shall have that as Parson.

And

And if a man leafeth Lands unto one for life, and after-F wards granteth the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for life loseth the Land by default, or alieneth in Fee; the Parson shall have a Writ de Consimilie casu during the life of the Tenant for life, and after his death he shall have a Writ of Entry ad Communent Legem, &c.

And if a Parson lose by Action tried, or loseth by default, his Successors shall have a Writ of Error or Attaint.

And if a Reversion be granted unto a Parson and his Suc-H cessors by Licence, he shall have a Quid juris clamat; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a Per que servita:

and fo of a Writ of Quem redditum reddit, &c.

And so if a Parson be Tenant in common of a Wood or I other Land in the right of his Church with another, and the other Tenant do Waste in the Wood, or Land, &c. the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the place wasted shall be affigned to the other party by the Statute of west. 2.2. But if a Parson be Patron of a Vicarage, and the Vicarage void, and a stranger doth present, the Parson shall have a Quare impedit, or Darrein Presentment: But if the six months pass, he K shall have a Writ of Right of Advowson, because that that Writ is given only for him who hath the entire Fee and right in him, and the Parson hath not the same, for the right is in the Patron and Ordinary.

Nor shall a Parson have a Writ of Right sur Disclaimer, L nor a Writ of Customes and Services, nor an Injustic vexes, nor such Writs as are grounded upon the meer Right. But it seemeth he may have Contra formam Collationis, or Feostamenti, and a Writ of Messe, and Adterminum qu. praterit, Sec. and such possessions which are not grounded upon

the meer Right.

And a Parson or a Vicar shall have a Writ of Juris utrum M against those who are several Tenants; and then the form of

the Writ shall be such:

Rex Vic. S salutem. Si L, Episcopus de Lond', Person. Ec-N clesse de E, secr. te secur & c. nunc summxis. liber & c. de visa. de E, quod sint coram Justic. nospris apud West. tali die, & c. parati sacrament. recogn', utrum xx. acra terr. e cum pertin. in E sint liber a Eleemosyna pertin. ad Ecclessam ipsius L, an Laicum, feod. A, B, C, & D; & interimterram ill. videant. Et sum', & c. pr. d. A, qui duas acras indè tenet, B, qui octo acr. indè tenet, C, qui quinque acr. & unam rodam indètenet, & D, qui quatuor

Cap.II.

Shall not

20E.3.

Juris usrum;
&c. Old N'
125.contr.

ACT.

acr. terræ & tres rodas inde tenet, quod tunc fint, &c.

And two Prebendaries may be one Parson in one Church, and then they shall joyn in a Juris utrum; and their Writ fhall be fuch:

Si W Præbendarius Prebendæ de N, & R Præbendarius Præbendæ de I, in Ecclesia beati Petri Eborac', Person. Ecclesiæ de A, prædictis Præbendis annexæ, fecerint, &c. tunc summ. xii,

Gre. ut Supra. And where a man is Parson of the moiety of the Church, and another Clerk is Parson of the other moiety of the same Church, then one may have a Juris utrum, and the Writ shall

be fuch:

r-F

nd

ee;

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V

Si W, Person-medietatis Ecclesi a de N, secerit, &c. tunc sum. xii,&c. sacramento recognosc. utrum,&c. fit libera Eleemosyn. pertin. ad medietatem ipsius W Ecclesiæ præd', an libera Eleemofyn. pertin. ad alteram medietatem R, Person. alterius medietatis Ecclesia prad', &c. And Dean and Chapter may have Juris utrum in special case where they are Wardens of a

Chauntry, thus;

Rex Vic. Lond. salue. Si Decanus & Capitulum Ecclesia S. Pauli London', Custodes Cantariæ ad Altare beatæ Mariæ in Ecclesia Sancti Pauli Lond', pro anima Ric. D. ordinat', fecerint vos secur', &c. tunc sum', &c. de visn. urbis Lond', quod fint coram Justic. nostris apud Westm. tali die, &c. utrum xx. folid. reddit. cum pertin. in suburbio London. fint, &c. pertin. ad Cantariam ipsorum Custod. ad Altare præd, an Laicum feod, Oc. & interim Ten. unde redditus, &c. Tefte, &c.

Where A Parson alieneth the right of his Church with Warranty, and afterwards the Alienee is impleaded, and

voucheth the Parson, who entreth into the VVarranty, and 40 E. 3.27. loseth by Action tried, his Successors shall have a Juris 2 H. 42. utrum of the Seifin of his Predecessor which he had before H. 4. 17. B the Alienation. And a Vicar shall have a Juris utrum against 11 E. 3. Tu-

the Parlon for the Glebe of his Vicarage, which is parcel of vis utrum 19, C the same Church. If a Parson receive Rent or Fealty of the 7 Eliz. Tenant of the Land which is aliened by his Predeceffor, he Dyer 239, shall not during his life have a Juris utrum; but his Successors 240. 22 H.

shall have Furis utrum.

If a Writ of Right be brought against a Parson, who joyn- B. accept eth the Mise without praying in aid of the Patron and Ordi- 20. nary, and afterwards lofeth by Default, his Successor shall have Juris utrum. Otherwise it is if he loseth the Land by Verdict, as it seemeth.

If a Parson have a Chappel annexed to his Parsonage, to which Chappel Glebe is appurtenant, the Parson shall have

Juris utrum of the same.

50.

A Recovery in a ceffavit against a Parson by Default shall F not bar his Successor, but he must have a Juris utrum against him who recovered.

If the Chaplain of a Chauntry lose the Lands of his Chaun- G try by an Affife of Novel diffeifin, yet he himself shall have a Juris utrum, because that that is his Writ of Right; and the Writ is to enquire, utrum sit libera Eleemosyna Cantaria, an Laicum feodum, &c. H. I. R. 2.

1 E. 1. Quod permittat.9. 32 E. 1. Comment. 24.

The Parson or Vicar shall have a Quod permittat in the H debet only of his own Seifin, or of the Seifin of his Predeceffor; and may have that Quod permittat in the nature of an Affife of Mortdauncestor, upon the dying seized of his Predecessor.

In a Juris utrum the Plaintiff ought to be named Parson 1 or Vicar, or fuch name in right of which name he bringeth his Action: for if an Abbot, or a Bishop, or a Dean, bring Juris utrum, by reason of Land which is parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abby or Deanry, they ought to be named Parsons of the Church in the Writ.

In a Juris utrum, if the Tenant at the first day do make K Default, Re-fummons shall be awarded; and if he make Default again at the Summons returned, then the Jury shall be taken. And the Tenantshall plead in a Juris utrum, I. as the Tenant shall plead in Assise of Novel differsin, scil. two or three Dilatories to the Writ; and if it be not found, then to pray the Jury to enquire of the points of the Writ. M

And where the Juris utrum is brought against several Tenants by feveral Summons in the Writ, it may be taken a. gainst one only for that parcel, and afterwards against the others. But it is otherwise in an Affise of Novel diffeisin, if it be not in special cases.

#### Writ of Consultation.

Scethe Stature de cir-I. Raftall Prohibition

TF the Bishop cite any of the Parishioners of the Church to N L be contributary unto the reparations of the Parish-Church, eumspette a- or of any Chappel annexed thereunto, if the party who sueth gain, 13 E. the Prohibition directed unto the Bishop suppose that he is impleaded of a Lay Fee in the Spiritual Court, the Bishop shall have a Consultation upon the matter shewed in the Chancery on the part of the Bishop.

37 H. 6. 9. Abson.

And so if a man obtain any Judgment or Sentence in the O Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will fue a Prohibition for to delay the execution of the Judgment, the party shall have a Consultation.

And

And if any Chaplain of the King's free Chappels keepeth any Concubine, then the Bishop may cite him before him for to punish him: and if the Chaplain purchase a Prohibition, because the King's free Chappels ought not to be vifited by the Bishop, yet upon the matter shewed, the Bishop shall have a Consultation to proceed to correct him

by pain corporal, and not pecuniary.

If a Prior and Covent fue in the Spiritual Court for Tithes and Mortuary, J, Parson of the Church of c, and an Abbot cometh into the Chancery, and furmifeth that Tholdeth the Church of his Parronage, and that the Prior, &c. claimeth the third part of the Church of his own Advowson and Patronage, and prayeth an Indicavit, and the same is granted; now the Prior, &c. may shew this matter in the Chancery. and have a Consultation, because that in the Statute of Articuli Cleri it is contained, that in Difmes and Mortvaries, See Articuli

when under these names they are proposed, there is no room Cleri, cap. 1.

for our Prohibition.

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If a Prior fueth in the Spiritual Court for the moiety of the Tithes of four Plough-lands, which he claimeth as appertaining unto his Church of N, whereof he is a Parlon imparsonee, which are not of the value of the fourth part of the Church, if the other purchaseth an Indicavit, surmifing that they are of the value of the fourth part; he who is fued in the Spiritual Court shall have a Consultation to proceed, dummodo non agitur de Advocatione alicujus partis Ecclesia, dictà Probibitione non obstante.

If a man promise unto another with his Daughter in Mar- vide 44.a. riage 10 l. by reason whereof the party marrieth his Daugh- 14 E.4.6. ter, if he who promifeth the money will not pay the money, 17 E.4.6. he shall be sued for the same in the Spiritual Court; and if Com. 309. he purchase a Prohibition, the other shall have a Consultation: 20 E. 4.3. and if he who promised the money dieth, yet the Husband who married his Daughter may fue the Executors for that

money, or the Executors of his Executors, in the Spiritual Court.

And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual ways and passages, the Parlon may fue in the Spiritual Court for this Difturbance; and if the other fue a Prohibition upon the matter shewed he shall have a Consultation.

If a Parson or Vicar have a Pension out of another Church. and the Penfion is kept from them, or another Parion taketh and claimeth the fame; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court. And so if a Parson, or Vicar, or Master of an Hespital. fue for a Pention in the Spiritual Court, which they and their Predecessors have had time out of mind, &c. if the other party purchase a Prohibition upon the matter shewed, he shall have a Consultation: and yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his election. But if he once fue a Writ of Annuity at the Common Law for the fame, and declare thereupon the Prescription, then he shall not afterwards fue in the Spiritual Court for that Annuity in the name of a Pension; and if he do, it seemeth the party may have a Prohibition against him.

And a Parson may sue in the Spiritual Court a Spoliati- C

28 H.6.19.

on against another for taking of his Tithes, or for taking of any Pension which doth appertain to his Church, although they claim by feveral Patrons and of their feveral Presentments: But this is intended only where the Tithes and profits taken and spoiled do not amount unto the fourth part of the value of the Church; for if they claim by feveral Patrons, and the Tithes, profits or Penfion amount unto the fourth part of the Church, then the party grieved shall have an Indicavit, because the Title of the Patronage doth come in debate, &c. But if they claim by one and the the Tithe of same Patron and of his Presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the profits do amount unto a fourth part, or a

18 H.6.19. For where the Patronage is in question, there is no Spoliation.

fued thereupon, the party shall have a Consultation. If a man have his Sheep lying and feeding for one year D in a Parish, the Parson of the Parish may sue in the Spiritual Court for Tithe of Wool of those Sheep; and if the party fue a Prohibition, he shall have a Consultation.

third part, or the moiety of the Church, because the Title

of Patronage comes not in debate; and if a Prohibition be

And note, that Consultation shall be granted and directed E to the party himself who sueth in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition aforesaid.

And the Parson may sue the Executors of his Predecesfor in the Spiritual Court for the Dilapidations, and for that fum of money which is found by the Enquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: and if the Executors sue a Prohibition, the party who fued in the Spiritual Court shall have a Confultation directed to the same, &c. to proceed; and

another Consultation directed to him to sue as before. And if a man doth detain his Tithes for his Sheep, which are in the Parish, and there feeding for half a year, if he die, the Parlon may fue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors fue a Prohibition. And the Parson by Prescription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish, from the feast of the holy Trinity, unto the Feast of Saint Peter, which is said ad vincula; & Decim. Lun. provenientis de Ovibus Parochianorum suorum, occisis & morientibus à festo S. Mich. usque ad festum Paschæ fingulis annis; & Decimas Mellis & Cera provenient. de Apibus & alveis Apum infra limites Parochiæ sua; and may fue for them in the Spiritual Court, and shall have a Consultation, if he be disturbed by Prohibition,

C

And a man may fue in the Spiritual Court for a Legacy: where a man deviseth fabrica Ecclesia 20 s. &c. the Parfon may fue the Executors for the same in the Spiritual Court, &c. and may fue the Executors in the Spiritual Court for the Tithes of Mills due by the Testator in his life-time. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arifing within certain limits within his Parish. And so he may sue pro Decimis panagii provenientibus de bosco suo; & pro pullanis provenient. de equitio Suo; & pro Butyro, Cafeo, & Lacticinio, tempore byemali. But it feemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at Salisbury, quod Consultationes fieri debeant de silvaca-

dua, eo non obstante quod non renoventur per annum. A man may fue in the Spiritual Court, where another 27 H.8.13. man doth defame him as a Falsisier, an Adulterer, or an

Ulurer, &c. And a Parson or other Priest may sue in the Spiritual Court, for laying violent hands upon him, &c. to have him Excommenge, or to have corporal punishment, but not to 12 H. 7.23.

have amends there. Where a Prior sueth a Parson in the Spiritual Court 11 H.4.38. Pro duabus partibus Decimarum provenient. of the demeans 7 H.4.1. of F, whereof the Parson hath spoiled the said Prior, for which the Parson purchaseth an Indicavit in the Chancery, furmifing that the Tithes do amount unto the fourth part of the value of his Church, and that the King is Patron thereof, by reason of the Wardship of an Infant in the King's hands, by reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not

amount unto the fourth part of the value of the Churchs and hath a Writ directed unto the Bishop to certific the King into the Chancery the value of the Church which the Parson holdeth, and the value of the Tithes demanded by the Prior: if the Bishop by his Letters certifie for the Prior, then the Prior shall have a Consultation. And so it feemeth by this Writ, that where an Indicavit is fued, &c.the King shall be certified by the Bishops Letters upon a Writ directed to the Bishop, what is the value of the Church, and also what is the value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: and it feems to be a good Rule and a good Order, fo as no party shall be deceived: and this Certificate of the Bishop shall bind the party to say or aver any thing against it.

11 H. 4.84. a Consultation shall be granted upon the Certificate return-So if the Bi- ed, &c. but notwithstanding that, if it be unto the fourth shop certifie part of the value of the Church, the party may fue a Writ of that JS is utlage, or in Right of Tithes, &c.

If a Eishop make an Order, that the Parson of such a A prison at the time of the Church shall yearly pay unto the Abbot of B and his Sucutlagary. 15. ceffors two parts of the Profits of the Church in the name E. 3. utlaga- of a yearly Fenfion, and that the Parson before he have posfeifion of the Church take an Oath fo to do, for which the Parson sueth in the Court of Rome, and obtaineth a Delegacy directed unto the Bishop and his Officers, to repeal the Order, &c. now if the Abbot fueth a Prohibition upon this matter, the Parson Thall have a Consultation.

If a Lay-man will not make his Offerings at days limi- R ted to the Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jefus Christ of his Curate, by reason whereof the Curate citeth and fueth him in the Spiritual Court for the fame; if he purchase a Prohibition, &c. upon shewing the matter,

a Consultation shall be granted.

If the Churchwardens of any Church have used time out C capacity at of mind to receive yearly of one of the Tenements of the Parish a pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may fue in the Spiritual Court for the fame: and if he obtain a Prohibition, Confultation shall be granted.

If a man be condemned in the Spiritual Court in a D Cause of Defamation, for which he appealeth unto the Court of Canter bury, &c. and there the Sentence is confirmed, and the party condemned in twenty shillings for

See for their the Common Law, 11 H.4.12. 7 H.6.30. 12 H.7.27. 8 E 4. 6.

12 H.7.22.

rv 2. Brev.

Eftoppel

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cofts, and the Cause remitted unto the Judges before whom it was first commenced, by reason whereof he who is condemned suct a Prohibition; the other party shall have

E a Consultation. If a Parson doth detain from the Parishioners the Goods of the Church, and in his Will he enjoyneth his Executors to deliver them unto the Parishioners; the Parishioners may sue the Executors in the Spiritual Court for them, and if they sue a Prohibition, the Parishioners shall have a Consultation; and this Consultation may be sued by any of the Farishioners who will sue in the Spiritual Court.

If the Bishop or his Official cite any man for laying violent hands upon any (lerk, &c. if he sue a Prohibition, the other See 51. K. may have a Consultation; Dunmodo agitur ad panam corpora-

lem, & non pecuniariam, &c.

If a man in time of the Vacancy of a Parsonage or Vicarage will not pay his Tithes, and the Ordinary ex officio cite him to pay them, &c. if he purchase a Prohibition, the other shall

have a Confultation granted unto him.

If an Abbot and Covent are bounden, by reason of any Ordinance lawfully made, to find four Chaplains to fing in such a Church or Chappel for the souls of such or such, and if they fail to find them, they bind themselves in divers pains and censures, and if they fail in all or in part to find these Chaplains, they have granted that the Dean of Salisbury or his Official shall interdict their Church, and so hold it until they have satisfied, &c. for which the Dean or his Official, ex officio, cite the Abbot and Covent to find the said Chaplains, &c. if they sue a Prohibition, the Dean or Official shall have a Consultation in that case.

If the Ordinaries do forbid the Friers, that they shall not hear Confessions, nor they shall not admit any one to be buried in their Church, and sue them in the Spiritual Court for that cause; if the Friers purchase a Prohibition,

the Ordinaries shall have a Consultation.

If a man fueth in the Spiritual Court for taking and de-See 51. I taining from him his Wire lawfully married unto him, if the other fue a Prohibition for the fame, he shall have a Confultation, forasimuch as for restitution of his Wire only he sued, &c. And yet he may have an Action at the Common Law, De uxore abdust a cum banis viri, or an Action of Trespass for taking the Wise, as it seemeth.

And a Parfon shall sue for a Pension of forty shillings in the Spiritual Court, whereof the House hath been seizedtime out of mind, and shall have a Consultation thereupon.

if a Prohibition be fued, &c.

If a man recover in the Spiritual Courtin a Cause of De- M famation costs, he shall sue there for the costs; and if the other fue a Prohibition, he shall have a Consultation.

53 12 H.7.22.

And if a man have corporal punishment in the Spiritual A Court for a Cause of Defamation, or for laying of violent hands upon a Clerk,&c. if the party will redeem his Penance, and promise to pay unto the party a certain sum for his Damages, &c. if after he will not pay the mony unto the party, the party damnified may fue for the fame in the Spiritual Court; and if the other party purchase a

Prohibition, he shall have a Consultation.

If a Parson for an offence have Judgment to be deprived B in the Spiritual Court, and the Patron doth presentanother Parson unto the Ordinary, who sucth the first Parson in the Spiritual Court because he will not void the Church, but defend himself by Appeals or other matters,&c. now if the first Parson purchase a Prohibition, the other may sue a Consultation; or without any Prohibition sued by the first Parson, the Parson may sue a Writ in the Chancery unto the Spiritual Judge, to proceed in the Spiritual Court upon the Cause of Deprivation and Disability.

Upon a Legacy given to any Order of Friers, they may C fue the Executors in the Spiritual Court for the fame. And if the Executors purchase a Prohibition, they may have a

Confultation upon the matter shewed, &c.

If Friers, or other persons whatsoever, sue in the Spiri- D tual Court for a Legacy, and have Process against others as Witnelles in that Cause; if the Witnelles will sue a Prohibition, furmifing that they are fued against their Wills, ex Officio Judicis, in the Spiritual Court, &c. yet he or they to whom the Devise is made shall have, upon the matter shewed, a Consultation.

And note, that the Justices of the King's Bench may grant a Confultation of Tithes as well as the Chancellor. And when the Justices grant a Consultation of Tithes of Spoliation, they make the Libel indorfed in fuch manner:

Dominus Rex non habet cognoscere in Foro Ecclesiastic. de Spoliatione Decimarum, quatenus de jure Patronat. feu de Advocatione Decimarum non agatur. And fothey give no power by the Indorfement, and the Rule in the Register is by those words.

Nota that the Juffices faid, That Tithes shall not be but E of fuch things which increase from year to year, and that by the manure of man: but that is against the Decretals.

And

F And all the Justices are against a Consultation in a Cause 27 H.S. 13. of Defamation, because, it seems, he may have his Action at 4c. 2r. Conthe Common Law for the same Defamation.

For the Cattel which feed in the Paffures.

H And also they say, that properly a Consultation ought not to be granted, but in case where a man cannot recover at the Common Law in the King's Courts.

And if the Bishop cite a man ex Officio for to appear before his Officers for Fornication, &c. or such like offences, and the party defendeth himself by Appeals, or such other delays, and by suing a Prohibition unto the Spiritual Court, and afterwards he waves the delays, and submits himself to the Judgment of the Spiritual Court, and they delay to proceed in these Causes for the vexation and delays, and the suing of the Prohibition which the party had before; then the party shall have a Writ directed unto the Spiritual Judges, that they do proceed in cause Defamationis ad penam canonicam imponent, & in cause Submissionis, &c. Proviso quad quicquid in juris nostri Regii derogation.cedere valeat

aliqualiter, per vos nullatenus attemptetur.

If the very Patron present an able person to the Ordinary, and the Ordinary refuseth him, and afterwards a Disturber presented unto the Ordinary another person unto the same Church, and the Ordinary doth admit, institute, and indust him, and afterwards the very Patron recovereth his Presentment against the Disturber; for which cause the presented of the very Patron such the presented of the Disturber in the Spiritual Court, to avoid and remove him; for which cause he such a Prohibition, &c. now the presented of the very Patron shall have a Consultation unto the Spiritual Court to proceed in that case, &c. But first the Record in the Common Pleas ought to be certified into the Chancery of the Recovery or of the Composition there made of the Title of the Presentment, before the Consultation shall be granted.

If the Tenants or Possessions of any Lands or Tenements within any Parish have used to find a Chaplain to say Divine Service in the Parish-Church,&c.time out of mind,&c. and afterwards they withdraw, and will not find such Chaplain,&c. then the Parson and Parishioners shall see against them in the Spiritual Court, for to find such Chaplain in the Church: and if the Tenants or Possessions of the Vand see a Prohibition upon the matter shewed in Chancery, the

Parson and Parishioners shall have a Consultation to proceed, and by such words: Vobis significamus, quod in causa illa quatenus ad Cantariam præd. ad pristinum statum, &c. &c. ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend. per vos agitur, licitè procedere, & ulterius sacre potevitis quod ad sorum Ecclessassicum noveritis pertinere, dista Prohibitione nostra, seu aliqua alià vobis in causa

præd.imposterum dirigend', non obstante, &c.

And if it be after time of memory, viz. in the time of R. J. and before the Statute of Mortmain, the Parson and Parishioners shall have such Suit for a Chantry, &c. And if a Parson and Parishionerssue one such Tenant and Possessor of the Lands to find fuch Chaplain, &c. and he fue an Inhibition from the Court of Canterbury, or appeal unto the Court of Canterbury, or make fuch subtil delays in the Court of Canterbury; then the Parson and Parishioners shall have a special Writ unto the Archbishop and his Officers: Quod in casu & Processupræd', coram vobis in Cur. Cant. virtute Appellationis prad devolutis, quatenus ad Cantar. ad debitum statum reducere faciend', ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend', & impon. faciend', & ad dictam sententiam in ipsum latam, firite deducta fuer', in suo robore permanere faciend. per vos agitur, rite procedere, & ulterins facere poteritis, & c. dicta Probib. noftra non obstante.

If a man devise an Ox or a Cow unto the Church for A Reparations thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the same unto the Churchwardens; then the ordinary ex Officio or the Churchwardens may cite him, and sue him for the detaining of the Cow or Ox: and if the other party sue a Prohibition, the Churchwardens shall have a special Consultation. Vobis significanus, quod in casu pred' quatenus ad restitutionem eisdem Gardianis de Legat' pred', in sorma pred', ac panam Canonicam eidem imponend' pro detentione eorund' coram vobis tantumvis agitur, licitè procedere, & ulterius facere poteritis quod ad forum Ecclesasticum, eg c. Probibitione nostrà non obstanta. And if he will not proceed upon that, they may sue an Attachment. &c.

And in many cases a man shall have a special Consultantion. As, if a Parson sue in the Spiritual Court for Tithes of great Trees which pass the age of 20 years, and makes his Libel by the name of Silvacedua; now the party may shew in the King's Bench, or in the Chancery, that the Trees were great Trees above the age of 20 years, and upon this Surmische shall have a special Consultation, to proceed it d

quad

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quod de cadua, and not of other Trees which are past 20 years growth, or the age of 20 years. And see the Statute for the fame, Anno 45 E.3.cap. 31.

If a man have a Chappel within his Mannor which is a donative Chauntry, or presentable, and the Chaplain hath used to have the Tithes arising of the demeans of the Mannor time out of mind, &c. now if a Parlon (in whole Parish this Chappelis) sueth the Lord of the Mannor, and also the Chaplain in the Spiritual Court, for the Tithes of the fame Mannor, they shall have a Prohibition, &c. because the Advowson of this Chappel may come unto the King by Wardship or Escheat, &c. And then the Parson within whose Parish this Mannor and Chappel is, shall have a special Writ See Comof Scire facias against the Lord of the faid Mannor, and also 472 in Mer against the Chaplain, returnable in the Chancery at a cer-lin's Case. tain day, if they can fay any thing wherefore a Confulta- Plan. comtion shall not be granted, and the Writ of Prohibition re- mends this tion shall not be granted, and the writ of Figure 11 form of Scivoked and repealed; and farther to do as the Court shall form of Scivoked and repealed; and farther to do as the Court shall granted. award in that case. And in the end of the Writ shall be, Et but there is habeas ibi nomina corum per quos ei scire feceris, Oc. & hoc another Breve, orc. Which Writ appeareth in the Register, in the end form used at of the Writs of Significavit.

this day.

#### Breve de Vi Laica removenda.

His Writ de Vi Laica removenda lieth as well upon a old Na. 37. Surmise made by the Incumbent, or by him that is 33. cont. grieved, &c. without any Certificate thereof made in the and Marron Chancery by the Bishop, as upon a Certificate thereof made in his reading. in the Chancery by the Bishop.

And when the Bishop makes Certificate into the Chancery of the Force, then the form of the Writ is fuch:

Rex Vic. Linc' Salutem. Ad requisition. venerabilis Patris Lincoln' Episcopi, tibi præcipimus, quod omnem Vim Laicam, que se tenet in Ecol sia de I sue diocesis, ad perturbandum ipsum Episcopum, quo minus officium suum Spirituale in Ecclesia illa exercere possit, fine dilatione amove as ab eadem, &c. And he shall have an Alias, and a Pluries, and an Attachment against the Sheriff, directed unto the Coroners, if he do not serve or return the Writs.

And if the King do collate anto any Prebend of any Bishop come to him by Title, and the Bishop make resistance, that the King's Fresenter cannot have the corporal ponetsion thereof; then the Writ shall be directed unto the Sheriif,

and shall be such :

Pracipimus tibi, quodomnem Vim Laicam few armatam, que

se tenet in dicta Ecclesia, vel domibus eidem annexis, ad pacem nofram in Com. tuo perturband, fine dilatione amove as ab eifdem; & fi quos in hac parte resistentes inveneris, eos per corpora sua attachies, & in prisona nostra salvo custodias, ità quod eos habe as coram nobis in Octab' Sancti Hil', &c.ubicunque, &c. ad respondend. nobis de contemptu & resistentia supradict'. Et habeas ibi nomina corum quos attachiaveris, & hoc Breve. And G. this Writ de Vi Laica removenda may be made returnable or not returnable, at his pleasure who will sue the Writ; and it may be returned into the Common Pleas as well as into

the King's Bench.

And note, that by this Writ the Sheriff ought not to remove the Incumbent who is in possession of the Church. whether the possession be of right or wrong, but only for to remove the Force, and to fuffer the Incumbent for to enjoy the possession; and if the Sheriff do amove or would out out the Incumbent who is in policifion, the Incumbent shall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath pur him out, that without delay he make him amends: and if he do not so do, the party may have an Alias, and Pluries, and Attachment against the Sheriff. And the form of the Writ de Vi Laica removenda, without the Certificate, is fuch :

Rex Vic. S salutem. Præcipimus tibi, quod omnem Vim Lai- A cam, seu etiam armatam potentiam, que se tenet in Præbenda de E in Ecelesia de C, ad pacem nostram perturband', sine dilatione amoveas ab ead': & fi quos tibi resistent. inveneris in bac parte, tunc affumpt. tecum fufficien, poffe Com. tui,fi neceffe

fuerit, eos attachies per corpora eor, &c. ut suprá.

And the form of the Certificate of the Bishop is such: B Excellentissimo Principi & Domino suo, Domino Henric. Dei gratia, &c. W, permissione divina Ebor Archiepiscopus, Ang. Primas, Salutem in eo per quem Reges regnant & cuncta Subfiftunt. Celfitudini veftræ Regiæ notum facimus per prefentes, quod quidam, salutis sue immemores, possessionem Domini I in Ecclesia de C nostræ Dioc. canonice sioi collata, quam A aliquando tenuit occupat', in noftr. offic. & libertatis Ecclefiastic.e & juris prædict. I præjudicium impediunt & perturbant : Ideirco Excellentia vestra humilit, supplicamus, quatenus ad banc vim & potestatem omnimod. amovend. brachium regalis potentia solità gratia appenatis, ut inimicor. Christi rebellio sic per vestrum reprimat. subsidium, ut libertas Ecclesiastica sub vestr. defensionis clypeo tuta maneat & illesa, & vos à Deo exinde retributionem condignam confequi valeatis, qui vos Ecclefie fue & populo per tempora confervet diaturna. Dat. apud B, quarto Kalend', orc.

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# Writ of Waft.

The form of the Writ of Wast against Tenant in Dower doth vary from the form against other Tenant; for the Writ of Wastagainst Tenant in Dower is such:

Rex Vic., &c Si A fecent te fecur, &c. tunc fum. per bonos Sum. B, que fuit uvor C, quod fit coram Juftic. nofris apud West. in quinden. Trin', often f. quare fecit Vastum, venditionem, destructionim, & exilium in terris, domibus, boscis, gardinis, & hominibus , que tenet in dotem de hereditate pred. A in N. ad exharedationem, &c. And in that Writ he doth not rehearfe the Statute which gave the Writ of Wast, nor the Writ of Wast against the Gardian, because they were puni hable at the Common Law, before the Statute, by Prohi sition and Attachment thereupon, if they did Waft.And exilium in hominibus shall not be put in the Writ of Wast, if the Tenant in Dower or other Tenant do not misuse the Vill ins of the Mannor, by reason whereof they depart from the Mannor, or from their Tenures; and if they do, then it is Wast. And in a Writ of Wast against Tenant for life or years, he shall recite the Statute in such form:

Rer Vic', rc. Si A fecer te fecur', &c. tunc sum. B,&c. quare cum de communi constitio regni nostri Angl. provissim sit, quod non liceat alicui Vastum, venditionem, seu destructionem facera in terris, domibus, boscis, seu gardinis; idem B de terris, domibus, y gardinis in L, que predict. A ei dimisti, &c. sect

Valtum. 70.

And if an Abbot bring a Writ of Wast against Tenant in 1 ower, the Writ shall be; Ostens, quare secit Vastum in terris, &c. quast enti in doten de jure Ecclesse ipsus, ad ex-39 E.3. 15. heredationem Ecclesse spie, &c. and shall not say, de hereditate Et 3 Ma. in the Abbat', nor, ad exheredationem ipsus Abbat', &c. But Dyer 129. if the Heir bring a Writ of Wast against the Tenant for like of his Ancestors, then the Writ shall suppose that the Tenant holdeth de hereditate, &c. and that the Wast is done ad exheredationem suam, &c. and that they have made Wast of Lands they hold in Dower of the Wise, yet the Husband doth not hold in Dower.

E And the Writ of Wast shall be alwaies brought against the Tenant in Dower, or Tenant by the Courtesie, although

they have granted over their Estates unto others.

F If the Husband make a Feofiment of his Land, or a ftranger doth abate after the death of the Husband, or different the Husband in his life time, and afterwards the Wife recovereth her Dower against the stranger, &c. if he G bring a Writ of Wast against the Wife, the Writ shall make mention of the Recovery, &c. how she recovered the Land

against him.

If a Feme hold in Dower of the King, who hath the Re-H version, and the King granteth the Reversion in Fee unto a stranger, and afterwards the Feme committeth Wast; now the Grantee shall have a Writ of Wast, and the Writ shall make mention how she holdeth of the King, and how he hath granted the Reversion unto a stranger, &c. and that The who held in Dower of the stranger of the Kings Grant hath committed Wast,&c. So if the Husband dieth, and the Heir maketh a Feoffment unto a stranger in Fee, who assign. eth Dower unto the Wife, and she commits Wast; the Writ shall make mention that she held in Dower of the gift of her Husband by the Affignment of a stranger, of whom the aforefaid Feme held in Dower of the Affignment which the Heir of the Husband hath made to the faid stranger, ad exharedationem of him who bringeth the Writ. The form of the Writ of Wast where the Wife is endowed ex assensu patris is fuch:

3 & 4 Eliz. Dyer 206, 208.

Rex, &c. Si S,&c. tune sum, &c. quæ suit uxor R, quòd sit, A &c. ostensquare secit Vastum, &c. que suit uxor R, quòd sit, A R quondam viri sui, ex assensa A B B patris predicti R, de præs. S, ex assensa es quantione ejusta. A, &c. And is the Wise do recover her Dower against the Father, then the Writ of Wast shall make mention of the Recovery thus; Et quod eadem Isabella in Cur nostra coram sustice nostrie de Banco per considerationem ejusta. Cur recuper avit, ut dotem sum, versus præs. A, ad exbæred ipseus S,&c. And the Writ may be of Mills and Vivaries; and then the Writ shall be, ostens, quare secit Vasta de terris, domibus, molendinis, boscis, vivaries, & gardinis.

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And if a Gardian in Chivalry grant over his Estate, who maketh Wast, the Writ of Wast shall be brought against the Grantee, and not against the Gardian; and it is not like Tenant in Dower, or by the Courtesse but if the Gardian do commit Wast, and afterwards granteth over his Estate, then the Heir shall have an Astion of Wast against the Gardian, and not against the Grantee. And so if Tenant for life or years commit Wast, and granteth over his Estate, the Writ lieth against him who doth the Wast, and not against his Grantee. And the form of the Writ against the Gardian is such: Rex, &c. Si A secerit, &c. tunc sum, &c. quare secerit, &c. que habet vel habuit incustodia de hereditate, &c. ad exheredationsm, &c.

cont: fintgo

40 E.3.33.
Finchden.
41 E.3.23.
Candifb.
42. E.3.19.
per Curiam.
24.H 8.14.

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20 H.6.1.26

And against the Executor of the Gardian the Writ is: Sum',&c. B & C, Executores Testamenti de,&c. quare fecer. Vafum.&c. quas habent in cuftod. poft mortem prad. B. de hæred. &c. ad exhared.&c.

In a Writ of Wast against Tenant by the Courtesie, the form of the Writ by the Register is to recite the Statute; and yet it seemeth the Writ is good, although that he do not recite the Statute; and the form of the Writis:

Rex, &c. Si A fecerit, &c. tunc fum', &c. quare cum de Com. confilio regni nostri Angl. provisum sit, quod non liceat alicui Vastum, renditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis sibi dimissis ad terminum vitæ vel annorum, seu de illis que per legem terr. tenent ; idem B de domibus quas tenet per legem Angl. de hæreditate præd. A in N, fecit Vastum, ad exharedationem ipsius A, & contra formam provisionis prad. ut dicitur. Et habeas, &c.

And if the Heir grant the Reversion of Tenant by the Courtefie unto another in Fee, and the Tenantattorn, &c.

then the form of the Writ is fuch :

Rex, &c. Si abbas de B, &c. fecerit, &c. tunc sum. B, Oc. quare cum, ut suprà, idem B de domibus in N, quas tenet ad vitam suam de præf. Abbate, quas A, de quo idem B illastenuit per legem Angl. de hæreditateipfins A, affign. inde

præf. Abbati, fecit Vastum, &c.

And if the Heir granted the Reversion unto another stranger in Fee, and the Tenant by the Courtefie doth attorn, and afterwards granteth over his Estate by the Courtesie to another stranger, and afterwards that stranger committeeth Wast; now the Grantee of the Reversion shall have his Action of Wast against the Grantee of the Tenant by the Courtesie, for he cannot be Tenant by the Courtefie, if not of the Heir,

But if the Tenant by the Courtefie grant over his Estate unto a stranger, and the Grantee commit Wast, the Heir shall have the Action against the Tenant by the Courtesie, and not against the Grantee who committed the Wast. But if the Heir have obtained or granted the Reversion in Fee,&c.and after the Tenant by the Courtefie attorn, and after grants over his Estate unto a stranger who committeth Wast; now the Grantee of the Reversion shall not have an Action of Wast against the Tenant by the Courtesie, but against the Grantee of the Tenant by the Courtefie. And if a Feme be Tenant in Dower, and she grant her Estate unto a stranger, and after the Heir granteth the Reversion in Fee unto another, and the Tenant attorneth and after the Tenant for term of 11 H.4.18.

TO H.4. Attornment 16. fion shall have an Action of Wast against the Grantee of The Attornment of Tenant in Dower, as he shall have against the Grantee of the Tenant in Dower. is Dower is good.

Rex. &c. Si A secrit, &c. tune sum. B, &c. Com de communi

Rex,&c. Si A fecerit,&c. tune sum B,&c. Cum de communi G consilio, &c. interris, &c. sibi dimissis ad terminum vita vil annorum; idem B de terris, domibus, boscis & gardinis in L, qua prad. A praf. B dimist ad vitam instus B: Or thus,Qua F, pater vel mater, vel aliqu. Antecess. prad. A, cuius hares insess, praf. B dimis. ad terminum annor, secit Vastum, &c. ad exharedationem, &c. &c. or contra formam provis. prad, ut d.e.: & habeas.&c.

Most Statute of Marleb.cap.23, it is ordered, Quot H
West. 113. Firmarii, &c. non fac' Vastum in domibus, &c. vel exil de hominibus. By which Statute the Writ of Wast de Exilio

hominum is warranted,&c.

In a Writ of Wast, if the premisses of the Writ recite, I Quod non liceat alicui facere Vastum in domibus, boscis, & gardinis; in the end of the Writ it is said. That the Deshath done Wast in Lands, Houses, Woods, Gardens, and Exile of men; so as there is more in the end of the Writ than is in the premiss, yet the Writ is good: and so if less be in the end of the Writ than is recited in the premisses, yet the Writ than is recited in the premisses, yet the Writ than is recited in the premisses, yet the Writ than is recited in the premisses, yet the Writ than is recited in the premisses, yet the Writ is good. As if it be recited, Quod chm provisum sit, quod non liceat alicui facere Vastum, &c. in terris, domibus, boscis, & gardinis; and in the end it is recited, Quod Defend. secit Vastum in terris only, or in boscis only, or in domibus only; yet the Writ is good.

If an Abbot make a Lease for life or years, and dieth, and the Lessee afterwards committeth Wast, the Writ shall be such: Rex, &c. Si Abbas, &c. tunc sum. B, quare chin de communi constitio, &c. idem B de domibus in L, quas præd. Abbas, &c. (if the Abbot himself maketh the Lease,) and is his Predecessor made the Lease, then thus; quas R, quond m. Abbas, &c. prædecessor præd' nunc Abbatis, præf. B dimisit ad vitam ipsus B, vel ad terminum annorum, (if the case be so) fec. Vastum, &c. ad exheredationem Eccl. ipsus Abbatis. And the like shall be for a Prior, or Master of an Hospital.

And against the Executors the Writ shall be; Sum' I & E K, Executores Testamenti L, quod sint, &c. iidem Executores de terr. quas pras. A prad' L dimisit ad terminum annor', sec' Vast. &c.

And if a man make a Leafe to a Feme fole, of Chafes, and C fhe take Husband, and the Lelfee dieth, and she and her Husband

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Husband commit Wast, the Writ for the Heir shall be thus:

Rex,&c. Si A sec', &c. tanc sum' B, & C ux' ejus, quod,
&c. quare chm, &c. iidem B & C de vivariis in L, quæ tenent
ad vitam ipsius C, ex dimissione gaam F, pater præd' A, cujus

hæres ipfe eft, inde fecit præf. C, fec' Vaftum, oc.

And another Writ for the Heir: where Land is leased to Husband and Wise, and the Heir, and the Husband dieth, and the Wise committeth Wast, the VVrit shall be: Eadem A de domibus in L, quas tenet ad vitam suam, ex dimissione quam VV inde sect eidem A, & pres. B quond viro suo, & haved ipsius B, patris præd'H, cujus hæres ipse est, sect Vastum, &c.

And another VVrit: when a Gift is made unto the Hufband and VVife, and unto the Heirs of the body of the VVife, and the VVife dieth, and the Husband committeth VVaft, the Heir shall have a VVrit of VVaft, and the VVrit

fhall be:

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Idem A de domibus in B, quas tenet ad vitam suam, ex dimissione quam VV indè sec' præs. A, & M quondam uxori ejus, & hæred' de corpore ipsius M, matris præd' B, cujus hæres ipse

eft, exeuntibus, fecit Vastum, &c. contra formam, &c.

And if a man leafeth Lands for term of life, and hath three or four Sifters, and dieth, and they make Partition of the Lands, and of the Reversion, and the Tenant for life committeth VVast; that Sifter and her Husband who hath the Reversion shall have a VVrit of VVast, and the VVrit shall be:

Rex, &c. Si A de B, & Mux. ejus, fec', &c. tunc sum', &c. F, &c. quare cum de communi consilio, &c. idem F de domibus, &c. in L, quas tenet ad vitam sum, ex dimissione S de C, de purparte ipsus M, ipsam de hereditate, que suit ipsus S fratris sui, cujus una hered. ipsa est, per partitionem inter ipsas M, A, & B, sorores ejus S, inde fastam, conting', secit Vastum, &c. Or thus: Idem F de domibus in L, quas tenet ad vitam suam de pres. M, ex dimissione A, patris pred' M, cujus una hered. ipsa est, depurparte ejusd. M, ipsam de hereditate pred. A conting', sec' Vastum, &c. And if Tenant for term of life grant over his Estare unto another, and the Grantee committeth VVast, the VVit shal be:

Rex,&c. Si B fecerit,&c. tunc sum' A,&c. idem A in domibus in N, quas tenet ad vitam I, ex dimissione quam idem I, cui præf. B illas dimissit ad eundem terminum, indè fecit præf. A, secit Vastum,&c. And if Tenant for term of lise grant over his Estate, and the Grantee granteth over his Estate, then

the V Vrit shall be thus:

go H.7.5.

Rex,&c. Si M de R, Præbendarius Præbendæ de F, in Eccl. beati Petri Ebor', secerit, &c. tunc sum' R, &c. quare cùm, &c. idem R de domibus in L, quas tenet ad terminum vitæ A, quæ suit ux. H de N, ex dimissione M de O, qui ill.tenuit ad eundem termin' ex dimissione ipsorum H & A cui quidem A,& M de O, quondam viro suo, VVB, quondam Præbendarius præd. Præbendæ, prædecessor præd' Præbendarii, ill' dimissit ad vitameorund. M de O, & A, sec. Vastum,&c. ad exheredation. Præbend' ipsus R, &c contra formam provisionis præd', &c.

And by that it appeareth, that if a Prebendary or Parson F maketh a Lease for term of life, he or his Successor shall have an Asion of Wast. If M leaseth Lands unto I for term of life and dieth, and L, Son and Heir of the said M, granteth the Reversion unto H in Fee, and H granteth this Reversion unto A in Fee, and afterwards the Tenant for life committeeth Wast; now the Writ of VVast brought by A shall be

fuch:

Rex,&c. Si A fec',&c. tunc sum. I,&c. quare,&c. id. I de domibus in L, quas tenet ad vitam suam de præf. A, ex assignations H, de quo idem I illas tenuit ad vitam suam, ex assignatione quam L, silius & hæres M, qui ill. præf. I dimisit ad eund. terminum, indè seciteid. H, secit Vastum,&c.

If S and K his Wife seised in Fee, lease the Land unto O G for term of life, and afterwards S dieth, and D takes H to Husband, and K the grant, the Reversion unto A in Fee, and afterwards D attorneth, and committeth Wast, and A

bringeth Waft; the Writ shall be:

Rex,&c. Si A fecerit,&c. tune sum',&c. B, quod sit,&c. idem B de domibus in N, quas tenet ad vitam suam de præs. A, ex assignatione quam H, & Kux. ejus, quæ quidem K, & Squondam vir suus, illas præs. B dimiser. ad eundem terminum, indesserer, præs. A secit Vastum,&c. If N leaseth Lands for years unto F, which F maketh I his Executor and dieth, and I leaseth the Lands unto R, and asterwards N granteth the Reversion in Fee to P, and P granteth the Reversion to M in Fee, and after R, Tenant for life, committeth Wast; the said M shall have a Writ of Wast, and the Writ shall be:

Rex Vic<sup>2</sup>, &c. Si M fecerit, &c. tune sum<sup>2</sup>, &c. R, quod sit, &c. quare cum, &c. id.R, in domibus in L, quas tenet ad termin. annor<sup>2</sup>, ex dimiss. I. Exec. Testam F cui N illas dimissit ad eund. terminum de præs. M, ex assign. P, de quo idem R ill. ternit ad eund. termin. ex assign. quam præd. N indé secit præs. P, secit Vassum, coc.

F leaseth

A F leafeth Lands unto E, and A his Wife, and unto the Heirs of E, and afterwards E dieth, and B his Son and Heir granteth the Reversion unto C in Fee, and afterwards A committeth Wast; the VVrit shall be:

Rex, &c. Si C fecerit, &c. tunc sum. A, &c. quare cum, &c. idem A in domibus in B, quas tenet ad vitam suam de præd. C, ex assign: quam B, silius & bæres E, cui & præf. A, quondam ux. suæ, F illas dimisit, habend. eisd E & A, & bær. ipsius E,

inde fecit præf.C, fecit Vaftum, &c.

M leafeth Lands for life unto C, and A her Husband, and A dieth, and C taketh to Husband T, or F, and T and C his Wife leafe the Lands unto P of F, who leafeth the Lands unto I, and afterwards M granteth the Reversion unto R in Fee, and I committeth Wast, and K bringeth a VVrit of Wast; the VVrit shall be such:

Rex, &c. SiR secerit, &c. tunc sum. I, &c. quare cum, &c. eadem I in domibus vel terris quas tenet ad vitam C, ux. T de F, de præs. R, ex assig. M, de quo P de H, quæ ill. præs. I ad terminum illum dimisit, ill. tenuit ad eund. terminum, ex dimissione præd. T & C, cui quidem C, & A quondam viro suo, præs. M ill. dimisit ad vitam eorund. A & C, indè secit præs. R, secit

Vastum, oc.

K leafeth Land unto Amice and  $\mathcal{J}$  her Husband for term of their lives, the Remainder to N, Daughter to  $\mathcal{J}D$ , for term of her life, the Remainder to the right Heirs of  $\mathcal{J}D$ , and afterwards T (right Heir of  $\mathcal{J}D$ ) granteth that Remainder unto B of C in Fee, and afterwards  $\mathcal{J}$  (Husband of Amice) dieth, and she committeth Wast; the Writ of Wast shall be such:

Rex. &c. SiB de C fecerit. &c. tunc sum, &c. Amic', quafuit uxor. &c. quare cum, &c. eadem Amicia in boscus. &c. quos
tenet ad vitam suam de pr.es. B de C, ex assign. quam T, cons. &c
hæres J D, de quo eadem Amicia illostenuit ad eund. termin',
ex dimissi, quam R indè fecit pr.es. A. & I quondam viro suo,
ad vitam eorund. A & I, ita quod post mortemeorund. A & I
pr.ed. bosc. N, filie. J D, ad totam vitam suam ulterin's remaner',
& post mortem ipsius N. iidem bosci rectis hær. pr.ed. J D remaner',
inde secit pr.es. A secit Vastur. &c.

And by this VVritit appeareth, that he in the Reversion shall have a Writ of VVast against the Tenant for life, where there is a mean Estate in Remainder for life to another.

There is another VVrit of VVaft in this form:

Rex.&c. Si I & G sec',&c. tuno sum', &c. I, &c. quare, &c. eadem I de onribus, &c. quas tenet ad vitam suam per Finem indè in Curia nostra coram W de C & sociissuis fustic. nostris

This is to be undershood wing a mean Glataigdetermined or surrinderd for during y mean. remainder no action will he styry: fog:a: de Banco per Breve noftrum inter prad. C, & I.& R de P,levat', & que polt mortem prad. T dy I, praf. C dy I, dy hared. de corpor .eorand' I do Cexeunt', remanere debent per formam Finis

præd', fecit Vaftum,&c.

And a man leafeth Lands for term of life unto E, the E Remainder to M for life, and afterwards granteth the Reversion in Fee to one B. Father of R. whose Heir the said B is; and afterwards the first Tenant for life dieth, and the Tenant in the Remainder entereth, and committeth VVast; now the VVritfhall be:

Rex,&c. Si R fec', &c. tune fum', &c. I de C, & Mux. ejus, &c. quare cum,&c. iidem I da M interris quas tenent ad vitam ipsius M de pref.R, ex assign. quam I de C, que terram pred' I de E ad totam vitam suam, ità quod post mortem ipsius I de E eadem terra praf. M ad totam viam fuam habend. remaner', dimifit, inde fecit B, patri prad.R, cujus bares ipfe eft, fecer' Vastum. &cc.

And there are other forms of Writs in the Register F which are not mentioned here for the length of them; ideo

quærelibrum.

And there is another form of Writ of Wast for the Lord G

by Escheat, who hath the Reversion by Escheat, &c.

And there is a VVrit of Wast in the Register for him in H the Reversion against Tenant by Elegit who hath Lands and Tenements in Execution for Debt or Damages. And fo against Tenant by Elegit who hath Lands in Execution by Recognizance of Debt: and also against his Executors who hath Lands in Execution by Elegit. And it seemeth to stand with good reason that the Action doth lie.

X But some say, that he against whom the Execution is sued shall not have an Action of Wast, because he may have a VVrit of Venire facias ad computandum, &c. and there the Wast shall be recovered in the Debt; but by the Action of VVaft he shall recover treble damages, and so it seemeth he shall not do by that Writ of Venire facias ad computandum.

And also if a man hath Lands in Execution by Elegit, and afterwards he in the Reversion granteth the Reversion unto a stranger in Fee; that the Grantee shall have an Action of VVastagainst the Tenant by Elegit seems reasonable; because the Wast is to his difinheritance, and he ought not to fatisfie the Debt due by the Grantor.

And see 21 E. 3. in Title Sc. facias, whether Recognisor I had a Scire facias upon his Surmife that the Recognifee had levied all the Debt by cutting of Trees.

If a man have Common of Estovers in the YVoods of another

3 H.6.1. Nota.

21 E.3.3.& 27. contr. 16 E.3. West. 100. come. Itans

another, and he who is Tenant and Owner of the VVood cutteth down all the VVood, he who ought to have the Eflovers shall not have an Action of VVast, but shall have an Affife of his Estovers: for the Action of VVast doth not lie but upon a Leafe made, or against Tenant by the Courtesie, or Tenant in Dower, or Gardian.

[59]

If Gardian in Chivalry countie Wast, the Heir shall have 4. 3. per Hankford, an Action of Wast as well at full age as within age.

Note, 12 H. in a Writ of

And if a man be in Ward unto the Lord by reason of the Wast the Use of Lands, because that certain persons were seised in Writ doth Fee of the Lands holden by Knights fervice unto the use of not recire his Father and his Heirs; now if the Gardian commit Wast, the Statute, the Heir within age, or of full age, shall have the Action which of VVast against the Gardian, and yet the Heir hath not the a Prob bi-Reversion of the Lands, but the Use only. But that is given tion was aby the Statute of 4 H.7.cap. 17.

painst the

And if the Gardian do commit VVaft, he shall lose the Gardian at VVardship; and if the VVardship be not sufficient to an- the Comfwer the Damages for the VVaft, then he shall render Da-mon Liw. mages unto the value over and above the loss of the VVard-

Thip, by the Statute of Gloucefter, cap. 5.

If the King commit the VVardship of the Heir in VVard unto another, and the Committee doth VVast; then upon a Surmise made thereof in Chancery, the King shall send a VVrit unto the Escheator, to go to the Land, and see if VVaft be done, and to certifie the King thereof in the

Chancery.

If Escheators do commit VVasts in Lands which they B have in their hands in custody; the Heir within Age, or of full age, shall have an Action of VVast, and shall recover treble damages against them, and they shall suffer imprisonment two years at the least, at the King's pleasure. And so if Escheators do commit V Vast in other Lands seized into the King's hands by Enquest of Office. Anno 36 E. 3. cap. 13.

And Escheators, or other Gardians of Lands, in the Vacation of the Temporalties of Bishopricks or Abbies, shall

do no VVaft,&c. Anno 14 E.3. pro Clero, cap.4 & 5.

And if Tenant for term of life, or in Dower, or by the Courtesie, or for years, grant over their Estate unto divers unknown persons,&c. to defraud him in the Reversion, and afterwards V Vast is committed; he in the Reversion shall have an Action of VVaft against the first Tenant who took the Profits, &c. Anno 11 H.6.cab.s.

D There is another VVrit of VVaft which lieth betwixt two Tenants in common of Lands or a VVood in Fee-fimple, and the form of the VVrit is fuch:

22 H. 6.2 c.

Waft o.

46 E.3.17.

42 E.3.22. Belk.

2 H.4. 3.

Old. Na. Bri' 36.

22 cont.

4 E.3. Waft

Rex, &c. Si A fecerit, &c. tune sum, &c. B, ostens, quare cum iidem A & B teneant boscum de I in N pro indiviso, præd. B de eodem bosco secit Vaslum,&c. ad exheredationem ipsius A, &c. Et habeas ibi,&c. And this Writ lieth as well of Lands, Piscary, Turbary, and the like, as of Woods when they are holden in common. See the Statute of West. 2. Cum duo vel tres. &c. turbariam.cap. 22.

The Heir within age shall have an Action of Wast a E

gainst the Gardian in Socage.

The Heirat full age shall have an Action of Wast against the King's Committee,&c. If two have a Reversion unto them, and unto the HeirsF

Newton ac. of one of them, they shall joyn in an Action of Wastagainst Tenant for life.

23 H. 6. Gardian in Socare shall not punish Wast done by a

Gardian in Socage shall not punish Wast done by a G

Walt shall be brought against Tenant for life, where there H is a Mesne Estate for years between the Tenant for life and him in the Reversion.

And it appeareth by the Register, that the Writ of Wast 5 o E 3 -4. In all be maintainable, although Mesne in the Remainder for term of life be between the Tenant for life and him in the Reversion.

Where a Lease is made unto the Husband and VVise for I life or years, there the VVise shall not be punished after the death of her Husband for VVast done by the Husband.

M.3 E.3. 1911 in 154 conta;

The Tenant may cut Trees to mend Houses, &c. and to K do Reparations. But if Houses decay by the default of the

7 H 6.38.ac. Tenant, to cut Trees to amend them is VVaft.

Where Wast is done by the King's Enemies, or by Tem-L

40 Aff.:2: pest, the Tenant shall not be punished for the same.

Cutting of dead Wood is not VVaft. And if a man cut M

20 E.3. Wast VVood to burn, where he hath sufficient dead Wood, it is VVast.

2 H.6.11. Also it is not VVast to suffer Lands to lie fresh, and not to manure them, and to suffer them to grow full of Thorns, &c. 7 H.6.38. Also it is not VVast to fell seasonable VVood, which is used to be felled every twenty years, or within that time.

of H.6.66.

22 H.6.12

If a man fell Trees, it is VVaft: and if he fuffer the Germinsupon the Roots of the Trees to be again newly destroyed, the same is new VVaft.

And if a man do not repair the Banks, by reason where- N of the Land is drowned, the same is Wast.

And

And if a man plough Mcadow, &c. it is a Waft. A Wall 15 H.3. or Pale, which is covered with Thabe or Timber, may, be Wast 131. Waft, if the Tenant fuffer them to be uncovered, by rca 20 H. 6.1. fon whereof, &c. And the digging of Gravel, or Stone, or 16 H. 7.ac. Coals, shall be faid Wast.

Housebote, Haybore, and Firebote, do appertain unto a Termor of common right, and he may take Wood, for the

fame. H. 21 H. 6.

A Bishop, or a Master of an Hospital, or a Parson, shall See 57 E. not punish wast done in the time of their Predecesiors. But an Abbot or Prior shall.

Tenant in Tail after possibility of Inue extinct, shall not

be punished for Waft.

Cutting down Willows in the fight of the Mannor is ad-

judged Waft, P. 40. E 3.

Leffee for life, the Remainder in Tail, the Remainder in 50 E. 3.3. Fee unto the Le ee for life, if he do commit Waft, he shall be punished by him in the Pemainder in Tail; and yet the Lefee for life hath the Remainder in Fee, but there is a Mesn Estate of Inheritance, &c.

If a man cut Trees of the value of 3 s. 4 d. it hath been 14 H.4.11.

adjudged Waft.

38 E.3.7. If a man maketh a Leafe for one year, or half a year, and Graunge to the Tenant do Wast, the Lestor shall have Wast, and the the value of Writ shall say, Quasteret atterminum annorum, and in the 40 s. wasted, and yet no Court he shall shew the special matter. A Termor may cut the Under-wood, growing under they.

the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. P. 41 E. 3.

And a man have an Action of Wast, and Covert upon divers Leafes. M. 44 E. 3.

The Gardian shall not be punished for Wast done by a

stranger, &c. but a Termor shall, &c.

If Tenant in Tailleafeth the Lands for his own life, he shall have an Action of Wast against the Tenant, if Wast be done.

The Grantee by Fine of the Reversion shall not have a Writ of Wast against the Tenant before the Tenant attorn: but if a Reversion escheat unto the Lord, he shall have Wass Lit. 131. against the Tenant without Amornment.

And so if the King grant the Reversion by Letters Pa- 34 H.6.51. tents, the Grantee shall have Wast without Attorament. 6 E.3.17.

And to if aman devifeth the Reversion unto another in Attorn. 13. Fee, upon Wast done, the Devisee shall have Wast without 12 hat 1.

Attornment.

And none flull have an Action of Wast but he who hath

an Estate in Fee-simple, or in Fee-tail. But a Parson or Pre-10 H. 7. 5. bendary shall have a Writ of Wast upon their Lease, yet fome fay that they have not the Fee-fimple in themselves

45 E.3.9. Thorp. ac.

And if Tenant for term of life commit Wast, and afterwards alieneth in Fee, yet the Writ of Wast lieth against him:otherwise it is if the Wast be done after the Alienation made, as is faid; tamen quere.

3 H.7.11. & e H.7.24. for the reafon of the Cafe.

21 H. 6.3. 22 H 6.2.

If an Abbot committeth Wast in Lands which he hath in Ward, and dieth, the Successor shall not be charged But if he be deposed, the Successor shall be charged. M. 49 E.3.

A Writ of Wast shall be maintainable against one upon a Leafe made unto him until he be promoted unto a Benefice. and the Writ Shall suppose good tenet ad terminum vite. And fo of a Leafe made to endure from fuch a Feast unto fuch a Feast, the Writ shall suppose good tenet ad terminum arnorum in that case, & by the Court the special matter shall be shewed.

Destruction of Villains by Tillage, adjudged Wast. Wast done by a Gardian unto the value of 20 d. was adjudged Wast, and the Plaintiff recovered. H. 24 E. 3.

40 11. 22. The Termor is not bound for to repair the Houses which Waft 24. by are ruinous at the time of the Lease made unto him. Knewit, a

If two Coparceners leafe Lands for life, and Wast is house which committed, and afterwards one of them dieth; the Aunt and the Neece ought to joyn in an Action of Wast for the not covered Wast done before; and yet the Neece shall not recover any damages for the same, but the place wasted, and it seems by the Gar- they shall hold the same in Coparcenary. M. 11 E 3.

dian, and no If there be two Coparceners, and one hath iffue, and dieth. Waft. But if and her Husband is Tenant by the Courtefie, and committeeth Wast, his Son shall not have an Action of Wastagainst him without naming the other Coparcener; but if he bring fuch red be disco- Writ, it shall abate. Ound vi. P. 2 H. 6. Title Wast.

If there be Tenants in common proindiviso, and one committeth Wast, the other two ought to joyn in an Action of Wast against the third. See for that, M. 3 E. 2. Wast.

If the Gardian commit VVaft, and the Heir being within age, bringeth an Action of VVast, the Gardian thereby shall lose the VVardship, and damages for so much as is wasted, besides the value of the VVardship which is lost: but have VValt. if the Heir at full age do bring a VVrit of VValt against him who was Gardian, and recover,, then he shall recover treble damages against the Gardian, because the same is out of the Statute of Gloucester, which faith, that the Gardian shall lose the VVardship; for he cannot lose the VVardship;

a Frame which was once covevered in the life of the Leffor, if the Leffee do erafe it after his death; the Heir fhall

45 E. 3. 3.

was newly

was abated

built and

there; and therefore he is not in that case as Tenants in Dower or by the Courtefie are, who were punishable in V Vaft by the Common Law. Quod vi. M. 12 H. 4. 3. in the Title of VVast, the opinion of Thirning.

### Writ of Edrepment.

Here are two manner of Writs of Estrepment. One is Variance when a man hath a real Action depending, as a For- from the medon, or a Dum fuit infra atatem, or a Writ of Right, or such cord, for the Action wherein the Demandant shall not recover damages; recital of then he may fee this VVrit of Estrepment against the Te- the name. nant, inhibiting him that he do not make VVaft, nor ftrip, Town,or pendant the Action: and this is properly before Judgment the like, is given for the Demandant.

And another VVrit of Estrepment lieth for the Demandant, where he hath Judgment to recover Seifin of Land, eaufe it is and before Execution fued by Habere facias feifinam; he may Original. fue this VVrit, that the Tenant do not wast or strip: and this not Judicial.

X VVrit doth recite the Recovery and the Judgment, &c. And 3 H,6.16.
also the Demandant may have a VVrit of Estrepment direct. No age in ed to the Sheriff, commanding him that he do not suffer the this Writ, Tenantto do VVast or strip. nature of

Trespass, and no Process of Utlary, for that it is a Precyre. 14 H. 7. 10. If the Def. plead in arrest of Judgment, or Release be pleaded after Verdict, or if the Justices take advice of their Judgment, the party may have Estrepment, by Read, 2 H. 6.13. 4 Eliz. Dy. 210.

And some say that this VVrit of Estrepment doth not lie 14 H.7.7. in such Action where the Demandant shall recover damages against the Tenant. But it seemeth reasonable that the Demandant have such VVrit where he doth recover damages, as where not: for it may be that the Tenant is not of ability to latisfie the Demandant for his Damages. And also if the Tenant shall be suffered to let the Houses to fall to decay, or to pull them down, and to destroy the Parks and Chases, it should be very inconvenient.

And in every real Action the Demandant may have a VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. VVrit unto the Sheriff, commanding him, that he see that 28 H.6.8. Virian him that the see that 28 H.6.8. Virian him t and that he do not suffer the Tenant to do such strip: and ment 9. by the like reason he may have the VVrit against the Te-Estrepment nant, where he may receive damages, &c.

And if the Tenant do make a Feoffment hanging the gainst the Plea, the Demandant may have a VVrit of Estrepment a firanger to gainst the Tenant and against his Feosfee, &c. And by the the Recover

fame ry.

same reason it seemeth that he may have a Writ of Estrepment against the Tenant and those who are his Servants, naming their names, &c. although they have nothing in the Tenancy, Queretamen. Vid. T. 5 E. 2.tit. Eftrepment.

In an Affife, and in every real Action, where the De-C mandant shall recover damages, he may have a Writ of Estrepment for Strip made after the Judgment, and before Execution: but for Corn cut and carried away after Judgment, and before Execution fued forth by the Demandant, the Demandant stall not have a Writ of Estrepment. Quare what remedy he shall have : it seemeth none; for the Tenantinay take the Profits of the Lands before Execution, as I think: for it shall not be said Estrepment, if not that the Tenant do such a thing which shall be said Wast if a Termor had done it.

And when a man purchaseth his original Writ directed to D the Sheriff, then may be purchase his Writ of Estrepment against the Tenant, if he will; or a Writ unto the Sheriff, commanding him to fee that the Statute which ordaineth the Estrepment be observed.

award of the VVrit and the return; for the Statute giveth it pendent the VVrit, and it is not pendent till returned. See 12 R. 2. Eftrepment 6. by Ch: Iron, he fail not recover damages for VVaft before the Judgment against the Tenant of the Land.

> And it a man fueth a Writ of Right unto the Lord of a E Court-Paron there he may fee a Writ out of the Chancery directed to the Sheriff, that he fee that Wast be not done, &c. or he may fue a Writout of the Chancery directed to the party himself; commanding him that he shall not do Wast, &c. and an Attachment thereupon. And when the VVrit is depending in the Common Fleas, then the Demandant shall have the VVrit of Estrepment out of the Common Pleas, or out of the Chancery, at his cledion.

> And the Writ may be directed unto the Sheriff and the F party; or he may have feveral Writs, one to the Sheriff, and the other to the party.

And hanging the Action the Tenant may do Waff, and G fhall not be punished, because it is before the Prohibition delivered unto him; but only for that Wast done after the Estrepment Prohibition delivered.

And if a stranger of his own wrong do Wast after the H Prohibition delivered unto the Tenant, and against the Tewere before ranes Will, then the Tenant shall not be punished for that Waft, &c.

the delive-

15. Is Eiiz. Dyer 325.

18 H. 8. c. Nore, A

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Writ be-

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Eftrepment

34 E. 3.

2 H.6.12.

12 R. 2. Br. 13. they were at iffue, if it

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In a Scire facias to execute a Fine, if the Tenant do com-33 H.6.6. mit Waste, the Demandant may sue a Writ of Estrepment, 14 H. 7.7. 2 H.6.13.

In an Affife, the Tenant did waste after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterward such a Writ of Estrepment against the Tenant for the Wast done by him after the Verdict, and before Judgment; and it was awarded, that the Writ was well brought. H. 21 E. 3.

And a Writ of Effrepmentagainst the Tenant for Waste 33 H.6.6. done after the Judgment, and before Execution, was main-

tainable at the Common Law before the Statute.

And if a Formedon be brought of a Mannor, and after the 15 Eliz.

Estrepment is brought against the Tenant, and afterwards Dyer 325.

a Tenancy doth escheat unto the Mannor, and the Tenant 32. Br. Edoth commit Waste in that Mannor, he shall be punished strepment for the same, and yet it is not demanded by the Writ, but 12.

Sureties were demanded by the Writ in the name of the Mannor, and the Land cometh in lieu of the Services, &c.

N If a man do recover in a Writ of Waste, he shall have a 14 H. 7. 10.
Writ of Estrepment against the Desendant for Waste done Conter and

after the Judgment, and before the Execution-

of In Artaint in the Common Pleas, the Plaintiff shall have the Writ of Estrepment against the Defendant out of the Br. Estrepment Common Pleas, if the will, or out of the Chancery.

If a man fue a *Juris utrum* against several Tenants, as he *Quare*, if may, or a *Scire facias* against several Tenants, there he may Justices of have an Estrepinent against any of the Tenants, and not Assist may against themall. And so it seemeth if a *Formedon* be brought Writ. against two Tenants joyntly, the Demandant may have an 34 E 3. Estrepinent against one Tenant only.

14. 5 E. 2. Estrepment 11. Joynt-tenancy at the original is a good Plea; otherwise to say, that he was Joynt-tenant at the time of the Judgment given.

Q And in a Jaris utrum fixed in London, a man shall have a-Writ of Estrepment directed to the Sherist of London, as appeareth by the Register.

## Writ de Partitione factenda.

R The Writ de Partitione facienda is such:

Rex,&c. Si A fecerit,&c. sum.B,&c.oslens, quare quam eadem A & B infimul & pro indictio teneant tres acras terre

cum pertin de bereditate que fuit M matris prædict. A & B,

CHINA

tujus hæred. ipfæ funt, in I, eidem B Partitioni noftræ Inde inter was fecundum Legem & consuetudinem regni Angl. faciend. contradic', & eam facere non permittit, minas jufte, ut dicit'.Et

habeas ibi Sum, & hoc Breve.

9 H. s. 15. Quare if Parcenery of Lands in tail shall have a Writ of Partition.

[34]

And if the Husband hath one part of the Land by pur. S chase, and the other parcel in the right of his Wife. and another Coparcener hath another part as one of the Heirs of the common Ancestor; then the Husband and the Wife shall have a Writ of Partition against the three Coparceners, and the Writ shall be such:

Rex. Vic',&c. Si I & Mouxor equs fecer', &c. fum.M, &c. oftens. quare cum idem I, et in jure ipfius M, de purparte ipforum de Manerio de T, quod fuit A, patris prædict. M, cujus una hered. ipfa eft, contingent', idemque I, virtute Feofamenti fibi per F, filiam & alter. bered.pred. A. de purparte ipfins F de codem Manerio contingent.facti, ac pr.ef.M.filia et tertia hær.ejufdem A. insimul et pro indiviso teneant Manerium præd. cum pertin', eadem M Partitione inde,&c.

And there is a Rule in the Register such, that is to say, A That Anno 12. at York was sealed a Writ de Partitione facienda betwixt strangers; and there it was said, that a man should have the same in every case without de hæreditate in the Writ: and it's there faid, that that Writ was never feen

before.

And if a man will fue a Writ of Partition for Lands in B. London, then he shall have a VVrit unto the Major and She riffs of London in the nature of an Audita quirela, and the

VVrit shall be such:

Rex Majori & Vic. Lond. falut'. Ex parte S de Het I uxor. ejus nobis est oftens. quod cum ipsi R et S insimul & pro indivifo teneant unum mesuag. cum pertin.in Lond', iidem R et S Partitioni inde secundum Legem et consuet.ejusdem Civitat-faciend. contradic', et eam fieri non permitt', in ipsorum S et I dampnum non modicum & gravamen, et contra Confuetud. in Civitate illa hactenus obtentam & approbatam: Vobis igitur præcip, quod audita ipsorum S & I in hac parte querel', & vocatis coram vobis Ret S, auditisque binc inde partium rationibus, iifdem S et I in pramissis ulterius seri faciatis quod de jure et secundum Consuetudinem Civitatis prædictæ fuerit faciend', et hactenus in casu consimili fieri consuevit. Teste,&c.

And by that it appeareth, that by the Custom of London C one Joynt tenant, or Tenant in common, shall have a writ

of Partition against his Companion.

And Partition may be made in the Chancery, where one of the Coparceners is in ward to the King.

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D And Partition may be made of an Advowson or of a Re- 11 H.4.63, version, that one shall have the Reversion of such Acres, and 28 H.6.2. another shall have the Reversion of other Acres; and such 9 Aff.23.

Partition may be without Deed.

And it appeareth in 3 E.4. that Tenants in common may tition 7. make Partition by Deed. So goynt Fort may 1 any 16 the theoreth And Partitions betwire husbands and wives thall bind 3 H.6.5. Common than the start of the start o

And Partitions betwirt husbands and wives shall bind 9 H.6.5. 32 House fee wives, if they be equal. And by Partition made of a 19 H.6.5. 32 House Mannor without speaking of the Advowson, the Advowson doth remain in common. And Joynt-tenants do make Partition of a mill without Deed, and adjudged good. Trin. 47 E. 3. 24. 31 H.6.25. 32 House shart the state of that they will be that they that they

If one Coparcener dothlease her part unto another Co-cannot, parcener for years, yet she shall have a writ of Partition a 21E 3.Partition 2.

gainst her Sister during the term of years.

After Partition in the Chancery, she which is within age, 21 E. 3. 31. after she cometh of full age, if she have too little, shall have Partition to a writ de Partitione facienda against her Sister; or a Scire Thorpe. fucias, upon the Record of the Partition in the Chancery, There remeagainst her Coparcener, which shall be returned into the by Seire factorized, where some partition or Extent size. shall not be made. &c.

And Partition betwixt Coparceners, that one-shall have 10 E.1.Parthe occupation of the Land from Easter until August, solely tition 21. and in severalty to her selfs, and then that the others shall c.4.4. Hal. occupy the Lands solely and severally from August to Easter, 34 Elis. occupy to them and their Heirs, is adjudged a good Partiti. Bridgewaters

on in the time of King E.I.

And by the fame reason it seemeth a good Partition, if two Coparceners have two mannors by descent, and they make a Partition, that one shall occupy one mannor one year, and the other the other mannor for that year, and then that he who occupied one mannor one year, should occupy the other mannor for the year following; and so they and their Heirs shall change every year, and occupy the mannor which the other Coparcener did occupy the year before.

And also Coparceners may make partition for term of

life, or for years.

And also partition, that one shall have the Land which V.57.Lir. is entailed, and the other the Fee-simple Land, is a good par-ac. 20 H.6. tition; and the processin this VVrit is Sum, Attachment, 44-and Distress infinite.

That y to be understood of Gent in Comon & 202 = - cut to p fivery fint Inshinkly Writ \$ 169:

# Writ de Excommunicato capiendo.

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20H.6.1.not D Efore this Writ shall be granted, the Contumacy and N good by his D Contempt made by the party unto holy Church ought ordinary to be certified into the Chancery by the Bishop, by Letters Seal. under his Seal. Butthis Certificate by Letters may be made The Arch- into the Chancery by a Bishop elect, before he be consecradeacon doth ted : And also the same may be certified by Letters of the certifie, and Chancellor or Vicar-General, when the Bithop is beyond it is faid that the Seas, or out of his Diocess, in remotis agen!', &c. And he was Or- although that the Bishop be in his Diocess, yet the Certifimediate, & cate of the Vicar-General by his Letters unto the Chancery, reciting that the Eishop is in remotis agena', is good, and yet it is shall not be traversed. And in time of Vacation of the Bidoubted whether . Thoprick, the Certificate ought to be made by the Gardians good or no, of the Spiritualties for the time being, or by the Archbi-because the shop, see if he be Gardian of the Spiritualties. King cannot

And upon this Writ he shall have an Alias, and a Pluries 0 have benefit and, if they are not answered, an Attachment against the poralties, for Sheriff, directed unto the Coroners, returnable in the Kings

that he hath Bench.

not Temporalties as a

Bishop hath.

And if the Excommunicate hath made satisfaction unto A the Church for his Contumacy and Contempt,&c. then the Bishop or Vicar-General, or the Gardian of the Spiritualties,&c. as before is faid, ought to certifie the King in the Su In tra per Chancery, that the party hath made fatisfaction unto the Church for the Contempt, &c. and thereupon he shall have

Rex Vic. Linc. falut'. Cum S & I, quos ad denunciationes De-19 fichcani & Capitali Ecclesie beati Petri Ebor. sede vacante, or an ether y guam excommunicatos, & claves contempnentes, per corpora sua, n od nola: ofhatsecuidum consustud' Ang. per te justiciari praceperimus, donec Le com Ca pi In. ab is so Episcopa Absolution hand in the Capitulo, or thus, ner', ficut iidem Decanus & Capitul', or thus, ficut idem Epife. per Literas suas patentes nobis significaver, vel significavit : Tibi præcipimus, quod ipsos S & I à prisona qua detinent, si ea occasione, o non alia, detinent in eadem, fine dilatione deliberavi facias,&c.

And if the Sheriff will not execute that Writ, he shall B have an Alias, and a Pluvies, and Attachment against the Sheriff, directed unto the Coroners, returnable into the Kings Bench.

when a suprised fuch Writto the Sherist, vi.

And if the party excommunicated, who is so taken and in Prison, offer sufficient Caution or Surety to abide the Ordinances and Rules of the holy Church, and the Judges there and the Ordinary do refuse for to take such Caution or surety, then he may have another Writ unto the Bishop to admit of his Caution, and the Writ is fuch:

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#### Writ de Cautione admittenda.

R Ex venerabili, &c. Ex parte A cum ad denunciationem vestram tangham excommunicatum & claves Ecclesia contempnen', per corpus fuum, fecundum Confuetudinem Ang', per Vic.nostrum Lincoln', &c. justiciari præceperimus, donec sanct. Ecclesia, &c. effet satisfactum ; Nobis eft oftensum, quod licet idem A. vobis frequent. obtulerit idoneam Cautionem de parend mandatis Ecclesie in formajuris, ut per hoc Absolutionis beneficium confequi poffet, vos nibilominus Cautionem hujusmodi ab eo admittere hactenus recufastis, de quo miramur : Et quia nolumus quod idem A diutius in prisona contra justitiam detineatur; Vobis mandamus, quod, accepta à præfato A Cautione pradicta, ipsum A à prisona qua occasione pramissa detinet.deliberari mandetis, alioquin quod nostrum est in hac parte exequemur, &c.

And if the Bifhop will not fend unto the Sheriff to deliver the person so excommunicated, then he shall have such

a Writ out of the Chancery for to deliver him, Rex Vic', &c. Ex parte A, qui ad denunciation venerabil', &c. and rehearse the Writ sent before unto the Bishop for deliverance of the Prisoner, &c. Et quia nolumus quod idem A diutius in prison a contr. justitiam detineat'; Tibi præcipimus, quod in propria person, tua accedas adpræsat. Episc', & ex parte nostra moneas & efficacit' indices, ut, acceptà ab eodem A Cautione præd', ipsum A à prisona prædicta, mandet deliberari. Et sidem Episcopus vel Custos in prasentia tua id facere noluerit, tunc ipsum A à prisona prædicta, si ea occasione, o non alia, detineatur in eadem, deliberari fac'. Tefte,&c.

And upon this Writ he shall have an Alias and a Pluries unto the Sheriff; and if he do not serve the Writs, he shall have Attachment against the Sheriff, but so shall he not have against the Bishop.&c.

And if the Bishop do certifie by his Letters into the Chancery, that he hath fent unto his Official or Archdeacon to absolve the party Excommunicate, then the party shall have a Writ unto the Sheriff rehearing those Letters, &c. Vobis pracipimus, quod prad'A, cim vob.constare poterit ipsum ab Excommunicatione sua prad' per prad. Offic. vel Archidiacon.

aofelvi.

absolvi, à prison, quâ detinet', se ea occasione, & non alia, detineat, in eadem, sine dilatione deliberari fac', & c. Teste, & c. And upon that Writhe shall have an Alias, Pluries, and Attachment against the Sherisf, if he do not serve the Writ.

And yet it feems that the Official or Archdeacon to G whom the Bishop hath sent his Letters to absolve the party is not bound to certifie the Sheriff that he hath such Letters; but the Sheriff ought to go or send unto them to know the truth thereof, and thereupon to deliver the party: and the Bishop, or he who excommunicated him, and upon whose Certificate the party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Register.

And if a man be excommunicated, and taken by a Sig-H nificavit, and after offers Caution unto the Bishop to obey the Church, and the Bishop do refuse, for which he such a VVrit to the Sheriss, to go unto the Bishop, and to warn him to take Caution,&c. now if the Bishop think in his conscience, or standeth in doubt whether the Sheriss will deliver him by that Writ, the Bishop may purchase another VVrit directed to the Sheriss reciping the case, and in the end thereof, This pracipinus, quod ipsima A à prisona pradicit, nifi in prasentia tua cautionem pignorat. ad minus eidem Episc. de satisfaciend, obuserit, nullatenus deliberes absque mandate nostro, seu ipsius Episcopi, in hac parte speciali. Teste, &c.

And if the Bishop do take Caution of the party to obey A holy Church, then the Bishop may certifie the same into the Chancery, and thereupon the party shall have a VVrit

unto the Sheriff for to deliver him.

And if the Sheriff do deliver such persons Excommuni - B cate without order of Law, then upon complaint of the Bishop into the Chancery, he shall have a new VVrit unto the new Sheriff, rehearsing the matter, commanding him to take the said person, and to detain him in prison; and also in the same Writ he shall command the Sheriff, to make the old Sheriff to answer the King in his Bench for the contempt: And if the Sheriff who setteeth the party at large be yet Sheriff, then it seemeth the Vvrit shall be awarded unto the Coroners to apprehend the party excommunicated, and to cause the Sheriff to appear, &c. as before is said.

And if a man be excommunicated before the Chancellor of Oxford, &c. and the Chancellor doth certifie this Excommunication into the Chancery, &c. upon the fame Certificate the King shall award a Significavit unto the Sheriff, to apprehend the party; and the VVrit shall be such: Quam nos

[64]

de gratia nostra speciali concesserimus, quod Cancellar. univerfitat. Oxon, qui pro tempere juerit, per Literas suas patentes Cancell. noftro Angl. pro tempore existent. fignificare possit & certificar. de nominibus fingulorum de jurisdictione praf. Cancellar. Oxon', qui majoris Excommunicationis vinculo fuerint Innodati, & quod ditt. Cancell. nostro, qui pro tempore fuerit, Brevia nostra fieri & sub magno Sigillo nostro confignari fac. pro captione corum qui fic per dictum Cancell. Oxon. fuer.excommunicati, & per quadraginta dies perseveraver. in ead ad signif. five certif. ipfius Cancell. Oxon. supradict', prout in Liter.noftr. patent. inde confectis plenius inde continet'; ac Joh. E, Cancell. universitatis prad',&c per Literas suas,&c. quod VV de B,&c. Ine jurisdictionis propter suam, ocas in the VVrit. And quere if the University of Cambridge have such priviledge; it feemeth they have.

If a man be fued in the Spiritual Court, and he purchase a Prohibition, and deliver the fame, and notwithstanding they proceed, for which cause the Defendant sueth an Attachment upon the same Prohibition, and pendant the Attachment, the Defendant in the Spiritual Court is excommunicated, and the same certified into the Chancery, by reason whereof a Significavit is awarded unto the Sheriff against the Defendant for to take him: now the Defendant 3 Has may come into the Chancery, and shew how that he had a Prohibition, and an Attachment thereupon against the party, and that pendant the Attachment he is excommunicated, and the Significavit awarded to take him. Now upon that he shall have a Supersedeas directed unto the same Sheriff, reciting all the matter, commanding him not to take him; and if he do take him for the occasion aforesaid, that he deliver him donec Placitum dicti Attachiament, fuerit diseuff, &c. And this VVrit shall iffue out of the Chancery, if the Attachment be not returned into the Kings Bench. But if the Attachment be returned into the Kings Bench, then he shall have this VVrit of Supersedeas out of the Kings Bench, or out of the Chancery, at his pleasure. And it ought to appear by the Certificate of the Bishop, that he hath been excommunicated by the space of forty days, before the Significavit shall be awarded.

And if a man be fued in the Spiritual Court, or the Bifhop fue or cite him Exofficio, and excommunicate him, and certifie the same into the Chancery, and upon the same a Significavit is awarded unto the Sheriff for to apprehend him,&c. and afterwards the Official by Letters certific into the Chancery, that he hath appealed from that Sentence

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unto the Court of Rome, or unto the Court of Canterbury, &c. then upon that Certificate he shall have a VVrit of Superfedeas directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him pendente Appellationis negotio supradict'; or thus, to surcease, donec de Confilio nostro aliud inte duxerimus ordinand', vel ufque talem diem; or thus, to surcease, &c. and if he hath apprehended him ea occasione, tunc ipsum à prisona præd' qua, oc. deliberari

faciat,&c.

And after the Significavit awarded against the party, if he bring the Popes Bulls into the Chancery, testifying that he hath appealed from that Sentence, &c. he shall thereupon have a Superfedens unto the Sheriff; and in the Superfedens it behoveth not to make mention of the Popes Bulls, but to fay, juid ficut per instrumenta publica,&c. And he ought to prove his diligence in fuing his Appeal by Witnesses, or by Oath, and within the year of the time of his Appeal fued. And the Rule in the Register is, writs of Supersedeas (hanging Appeals) ought not to be; if it do not appear upon Record in the Chancery that the Significavit is granted and

This will his not And the

And this VVrit of Significavit doth not lie but where a F. un left y Grom man is excommunicated by a special name, and in a special Suit against him by the Ordinary Exossizio, or by the party, appear of for that is called Sententia majoris Excommunicationis; and upon Certificate thereof in the Chancery doth the VVrit lie. But where he is not especially excommunicated, &c. may hand his - ted in Sententia minoris Ercommunicationis, upon that this if gente VVrit of significavit doth not lie, for they ought to ex-At 2 Drihal 2. press the cause, and sue against him specially in the Certificate.

Upon an Excommengment certified by the Pope's Eulls a Significavit shall not be granted.

[65] 12 E.4.15, 14 H.4.14. 8 H.6.3. 20 il.6.1. 7 E.4.14.

If a Bishop certifie an Excommengment into the Chancery made in time of his Predecellor, and the Contumacy, &c. he shall have a Significavit thereupon: But upon the Certificate of the Commitary, or Official, of an Excommengement in the Chancery, and of the Contumacy a Significavit shall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Juri diction, of an Excommengement in Chan erv, a Significatit shall not be granted.

If a Bishop certific in Chancery, that another Bishop hath certified him that the party is Excommunicate in his Dioceis, and so hath remained by the space of forty days;

the same Certificate is void, and a Significavit shall not be

granted thereupon.

If a man be Excommenge in the Spiritual Court, and the Bishop certifie the same in the Chancery, and hath a Writ of Significavit directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of Rome, and hath Bulls and Instruments exhibited into the Chancery to prove the same; then upon these Bulls,&c. shewed in Chancery he shall have a special Scire facias, rehearing all the matter directed unto the Sheriff, to warn the party at whose Suit he was excommunicated to appear in the Chancery at a certain day, to shew cause why he ought not to surcease to apprehend the party so Excommunicated depending the same Appeal; and also commanding the Sheriff to take sufficient Sureties, who will answer body for body for him who is so Excommunicated, to pursue,&c.and to do unto the party as the Court shall award, and that then he do surcease to apprehend him. And if the Sheriff return the Writ of Scire facias, that he hath warned the party, and hath fent that Writ unto the Baily of the Liberty, who had given him answer, that he had warned the party at whose Suit he was so excommunicated, to appear in the Chancery at the day given by the Writ, &c. now if the party who was returned warned doth not come or appear, then he who was excommunicated shall have another Writ unto the Sheriff for to deliver him, &c. if he harhapprehended him; and if he hath not taken him, that he do surcease for to apprehend him,&c.

And if a man be excommunicated by the Bishop, and after the Vicar-General certifieth the same into the Chancery, because the Bishop is in remotis, for which a Significavit is granted, and he is taken by it; and then he who is apprehended, by his friends, sheweth in the Chancery, how that he hath appealed unto the Court of Canterbury, which he followeth with effect: upon this Surmise he shall have a Writ unto the Sheriff who hath the party Excommenge in his custody, commanding him that he warn the Bishop or the Vicar-General, and him who sued the Process against the party Excommenge, to appear at a certain day in the Chancery, to shew wherefore the party should not spendente Appellations) be delivered; and also to cause the party Excommenge under safe custody to come, and to do as the

Court shall consider in the said Cause.

D If the Bishop do excommunicate a man, and certifieth the same into the Chancery, and thereupon a Significavit is payarded.

awarded, and the party taken thereby, and he sueth Appeal in the Court of Canterbury, or of Rome, &c. and hath a Scire facias against the Bishop as aforesaid, and against the party, to answer in Chancery, and shew cause why he should not be delivered; by which the Bishop and the party are warned, and appear not, for which cause the party is delivered: now if he who is excommunicated will sue any Action in the Common Pleas, or in the King's Bench, or essentiation against him in the Common Pleas or essentiation against him in the Common Pleas or essentiation against him in the Common Pleas or the Significavit unto the Justices of the Court where he sueth, rehearsing all the matter as aforesaid,&c. commanding them to proceed sean-

dum Legem & consuetudinem Regni.

If the Bishop certifie into the Chancery an Excommuni- E cation made at the Suit of any one, and thereupon a Significavit is awarded, and the party apprehended; now he who is apprehended may by his friends shew in the Chancery, that he fued an Appeal from that Sentence in the Court of Canterbury with effect, and by Scire facias against the Bishop, and the party at whose Suit he was excommunicated, returned at a certain day into the Chancery: and thereupon he shall have a VVrit unto the Sheriff, rehearsing all the matter commanding him thereby to warn the Bishop and the party to be in the Chancery at the day of the Return of the VVrit, to flew what they can fay wherefore the party shall not be delivered; and also by the same Writ commanding the Sheriff that he take sufficient Sureties of the party excommunicated to appear in the Chancery at the fame day, and to carry him back again unto prison, if the Court at the same day shall so think fit; and in the mean time to let him go at large by his Sureties, &c. And then if at the day of the Return of the Writ the party excommunicated doth not appear, nor his Bail, then shall a new VVrit be awarded unto the Sheriff to apprehend the party excommunicated again,&c. donec fancta Esclesia tam de contemptu quam de injuria ab eo fuerit satisfact'; and also to arrest the Bail, to appear before the King in his Bench at a certain day,&c. ad latisfaciend.tam nobis quam pr.ef. Epijcopo, and him at whose Suit he was excommunicated; and farther to do as the Court shall award. And if at the day given in Chancery by the VVrit of Scire facias, the Bishop, and the party at whose Suit he was excommunicated, do appear, and also he who was excommunicated, and the matter can. not be determined that day: then Day shall be given over

unto

unto both parties, at a certain day at another Term, &c. and then the party excommunicate shall have a special Supersedeas unto the Sheriff, rehearing the whole matter, commanding him that he do not apprehend him till that day, &c. if he have not other commandment from the King, &c.

There are other VVrits in the Register which are called VVrits of Significavit, because they shall not be granted before that the Bishop hath made Certificate by his Letters under his Seal of the matter in the Chancery, upon the which the VVrits shall be so granted. And one VVrit is, where a man is a Clerk convict for Felony, and afterwards makes his Purgation; now the Bishop shall certifie this Purgation into the Chancery by his Letters, &c. and thereupon the Clerk convict shall have a special VVrit out of the Chancery directed unto the Sherist, to restore him to his goods and chatrels.

Rex Vic. Lincoln' salut'. Cùm C de P, Persona Ecclesia de R, nuper de raptu uxoris S, & de assortac. bonorum suorum, coram dilecto & fideli nostro VV & sociis suis Justic. nostris, prout mos est, eid. Episcopo liberatus, ibideminnocentima suam super eodem crimine coram eodem Ordinario legitima purgament, sicut idem Episc. per Literas suas patentes nobis signific'; Tibi præcipimus, quod eid. Cterras, bona et catalla sua per te in manum nostram occasione præmisseapta, nisi sugam secrit ead. occasione, sine dilatione restituas de gratia nostra speciali.

Tefte.&c.

And the like VVrit for the Heir of the Clerk, after his death, to deliver the Lands unto him,&c. and in the end of the VVrit are these words, fine dilatione de gratia nostra speciali; by which it seemeth that these words, de gratia nostra speciali, are not necessary words, but words of form for the Kings Honour, and that the King of right ought to make such

restitution.

And if a man do demand his Clergy before the Juftices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Juftices command the Clerk to 215. Stamf. Goal again, &c. now at the Suit of the Ordinary, or of his Vicar-General, unto the King or his Chancellor, he shall have a Writout of the Chancery directed to the Juftices of Goal-delivery, reciting the matter, commanding them that they send unto the Goaler to deliver him unto the Ordinary.

And if a man be taken out of a Church or out of Sanchuary against his will: now if the Bishop certifie the matter by his Letters Parents under his Seal into the Chancery, &c. desiring restitution; then the King shall send his Writ unto [66]

the Justices of Goal-delivery, reciting the matter, commanding them to bring back the party to the place from whence

he was taken.

If an Abbot or a Prior certifieth by his Letters under his D Seal, that his Monk, Frier, Canon, is vagrant out of his Order, &c. in the Country; then upon that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney, to chastise him according to the Rule of his Order, &c.

### Writ de Homine replegiando.

IN divers Cases a man shall not have this Writ, although he E be taken and detained in prison: As if a man be apprehended for the death of a man, or be taken by the Kings command; or if a man be apprehended by the command of the Chief Justice, as it appeareth by the Register. But the Statute of west. is, that he shall not be repleviable if he be taken by the command of the Justices, and doth not say of

the Chief Tuffice.

And also if a man be taken by the command of the Justices of the Forrest, or if a man be out-lawed; or if a man abjure the Realm, or if a man be Approver, or if a man be taken for Felony with the manner, or those who break the Kings prison, or those who are common and known Thieves, or those who are appealed by Approvor so long as the Approvers live, if they be not of good fame, or for burning of houses felloniously, or those who counterfeit the Kings mony, or the Kings Seal, or those who are taken by Certificate of the Bishop by a Writ de Excommunicato capiendo, or those who are apprehended for Treason, or those who are convict by a Writ of Rediffeisin, &c. all these persons are not bailable by this common Writ de Homine replegiando. But first they ought to make their Fines, or agree with the King, and thereupon to have a special Writ to the Justices, or those who do keep them in Prison, reciting how they have been fined, commanding them for to deliver them.

And if two or three men be taken and imprisoned, they F may sue a joynt Writ de Homine replegiando. And yet H. 8 H.4.31 such a Writ sued by two was abatec's but yet it seems the Law is, they may sue joyntly, and the Writ shall be

See 78 D. & fuch:

Rex Vic. Lincoln', &c. Precipimus tibi, quòd justè & sine dilat. repleg. sac', B, C, & D, quos tu inse cepisii, & captos tenes, ut dicitur; vel, quos D& E ceperunt. & capt. tenent, ut dicitur;

9 H.4.2.

8 H.4.2 I.

but 8 H. 4.

dicitur, nist capti suerint per special præcept nostrum, vel capitalis Justic, nostri, vel pro morte homin, vel pro Foresta nostra, vel pro aliquo alio recto, quare secundum consuet. Angl. non sint repleg; nè amplius clamorem indè audiamus pro desectu justitiæ. Teste&c.

And upon that he shall have an Alias and a Pluries, and Attachment, if need be. But if he who apprehendeth the man do claim him as his Villain, and the same is returned by the Sheriff upon the Alias or the Pluries, then the Plaintiff shall have another Writ of Pluries to the Sheriff

thus:

Rex Vic', &c. Quum tibi plur præceperimus, quod juste, &c. W, quem H cepit, & capt. tenet, ut dicitur, nisi capt. effet, &c. non sit replegiabilis, vel nobis causam significares, quare, &c. ac tu nobis retornasti, quod accessisti ad Manerium prædict H, ad replegiand. ibidem pred' W, juxta tenorem mandati noftr. prad', sed prad' H deliberation. corporis ipsius W non fieri permifit, so quod afferit ipfum W effe nativum & fugitivum fuum Manerit sui pried', clamando jus nativitatis & servitutis in persona ipsius W infra dominium Manerii sui,&c. Nos, nolentes quod prad. W, fi liber homo fit , per hujusmodi caption. & clameum lege communi destituat', tibi pracipimus, quod si prad. W invener. tibi sufficient. Caution, &c. effendi coram nobis à die S. Mich. in xv. dies, &c. ad respondepræf. H. fi.&c. tune ipfum W interimrepl. fac',juxta tenor. mandatorum nostrorum, &c .. Et nihilominus fi præd. W fecerit te fecur. de clam. fuo, &c. tunc pone per vad', &c. præd. H, quod fit coram nobis ad diem prædictum, præd. W de captione & clameo præd. refp. Et habens ibi nomina Pleg', & hoc Breve, &c.

And in the fame manner it shall be done in a Homine replegiando: if the Defendant claim the Plaintiff as his Ward, then upon that returned at the Plaintiff as his Ward, then upon that returned at the Plaintiff, the Plaintiff shall have a special Writ as aforesaid, reciting that he holdesh the same Land of the Defendant by Socage, and not by Knights-service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain day, as afore is said, to answer

unto the Plaintiff,&c.

And if a man be taken within the Cinque-Ports, then he shall have a Writ de Homine replegiando directed unto the Constable of Dover, and unto the Warden of the Cinque-Ports, or his Lieutenant, in the nature of an Audita quirela, and the Writ shall be:

Rex diletto,&c. Constabular.Castri sui Dover',&c. & Castod. Quinque Portuum suorum, vel ejus locum tenenti, salutem. Man[67]

damus vobis, quod audita querela A, quem B cepit, & infra libertat. Portnum prædict' captum tenet, ut dicitur, vocatifque coram vobis partibus præd', auditisque hinc inde eorum rationibus,ipsum A, si secundum Legem et Consuetud' Portuum prædict' replegiabilis fuerit, replegiarifaciatis, nifi capt. fit per speciale praceptum nostrum, vel capitalis Justic' nostri, &c. ne amplins inde clamorem audiamus pro defectu justitia,&c.

And if a man be taken by the Officers of the Forrest, then he shall have a Writ de Homine replegiando unto the Keeper

of the Forrest, in such form, viz.

Rex dilecto & fideli suo W de B, Custodi Forestæ sue citra Trent, vel ejus locum tenenti in Foresta de S. Mandamus vobis, quod fi A & B, capti et detenti in Foresta de S, pro transer Venationis per ipsos facta, ut dicitur, unde indictat. sunt, inven' vobis, viz. uterque eorum, duodecim probos et legales homines de Balliva vestra, qui eos manucaptant habere coram Justic. nostris proxim' itinerantibus ad Placita' Foresta in Com. N.cum in partes illas venerint, ad stand' recto de transge' præd'; tunc iplos A et B, fi secundum Aff. Foreste replegiabiles fuer', præd. rif. interim tradas in ball', ficut præd. eft: et babeas ibi no-

minaillorum xij.hominum, & hoc Breve. Tefte,&c.

And if the Warden will not bail him, he shall have an B Alias and Pluries against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and to shew wherefore he hath not replevied him, &c. And in the same Writ it shall be contained. That he call to him the Verderors, to deliver him who is fo taken in the presence of the Verderors by good Bail, and that the Sheriff do deliver the names of the Bail unto the same Verdefors, to answer before the Justices in the next Eyre. And no man shall be taken nor imprisoned for Vert or Venison, if he be not found in the manner, or indicted; in which case he shall be fet to Bail by the Warden ex Officio, or otherwifeby Writ, as is aforefaid, &c.

For hunting in the Kings Chases, or in the Chases of o- D ther men, he ought to be fued at the Common Law; and for the same a man shall not be taken and imprisoned, until he be convicted at the Common Law in an Action there brought against him. But for hunting in Parks,&c.the party shall have an Action within the year and day upon the Statute of West. 1. cap. 20. Eut after the year and day the King.

shall have the Suit.

And if a man hath any Park within the bounds of any E Forrest, which Park is not inclosed according unto the Asfife of the Forrest. &c. then it shall be seised into the Kings

hands ;

hands; and then the party shall have a special Writ of Replevin, to replevy a Park out of the Kingshands : and the Writ

is fuch;

Rex dilect. & fideli suo W B, custodi, &c. vel ejus locum tenenti in Foresta de S, salut'. Mandamus vobis, quod Parcum A de B et I, qui est infra metas Forestæ nostræ præd', et qui, pro eo quod non includitur secundum Assisam Foresta, captus est, ut dicitur, in manum nostram, si secundum Assisam Forestæ replegiabilis existat, eidem A, usque ad adventum Justic. Placit.

Foresta in Com. pradict', replegiari fac'. Teste,&c.

In a Homine replegiande, the Defendant claims the Plaintiff & H.7.3. for his Villain, and the Plaintiff pleads that he is free, and 13 H.7.17. faith that the Defendant hath taken his Goods, and prays but the ber-ter opinion that he may gage deliverance, &c. for which the Defendant is, that it is doth gage deliverance. But the Plaintiff shall not find Sure- in the Judges ties that he shall re deliver the Goods, &c. if he be found discretion, Villain. Quod vi. M.6 E.4.8.

But in a Homine replegiando, if the Defendant claim the & 12 E.4.4. Plaintiff as his Villain, the Plaintiff ought to find Sureties that he fhall to deliver his body to the Defendant if he be found his furety.

Villain. Quod vid. P.31 E.3.

In a Homine repleg, the Plaintiff was bound in a Recognifance in a certain fum of mony unto the Defendants use, that he would sue him cum effectu; and if the Writ be abated for any cause, yet he ought to sue another Writ for that taking,&c. otherwise he shall forfeit that Recognisance, as it

appeareth, H.8 H.4.

If a man fue a Homine repleg, and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the same upon the Alias, or upon the Pluries, in the Kings Bench or Common Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his body, &c. he shall have a special Writ unto the Sheriff for to deliver the Plaintiff out of Prilon, &c. But by the Register he shall have a special Writ unto the Sheriff to take Sureties of the Plaintiff, and to fue with effect, and to yield his body, if, &c. But the usage at this day is, that he find Sareties in Court, &c. and not to award a Writunto the Sheriff to take Sureties. Quod vi. M.8 H.4.3.

And in a Homine repleg. if the Sheriff return that the Defendant hath efloyned the Plaintiffs body, fo that he cannot deliver him; then the Plaintiff shall have a Capias in Withernam to take the Defendants body, and to keep the fame quo. usque,&c. whether he be a Peer of the Realm or other common person. And if the Sheriff return Non eft inventus in

But 6 E.4.8.

T68.7

this Capias in Withernam of the body, then the Plaintiff shall have a Capias in Withernam against the Desendants goods, &c. Quod vide M. 11 H.4. intitle of Withernam.

Writ de Replegiare de Averiis.

F a man take more live Cattel than one Beast, then the D
Writ issuch:

Rex, &c. Pracipimus tibi quod juste & sine dilatione replegiari fac. B Averia sua, qua D cepit & injuste detinet, ut dicitur; & postea eum inde juste deduci fac, nè amplius inde elamorem audiamus pro desectu justitie,&c.

And if he take but one live Beaft, then the Writ shall be: Rex, &c. Precipinus quad repl. fac. B quendam equum suum,

vel quoddam jumentum fuum, vel bovem fuum, &c.

And if a man take a dead Chattel, then the Writ shall be a Rev. &c. Pracipimus, &c quod repl. fat. B-bona & catalla fua. And in the Count he ought to declare of divers things: But if he take but one thing which is a dead Chattel, then

the Writifiall be:

Rex, &c. Pracipimus tibi, &c. quod repleg. fac. B quodd. E rete, vel quoddam examen apium fuarum, vet quoddam ferr. molend. [ni And if the Sheriff doth nothing upon this Writ, then he shall have an Alias repleg. fac', &c. and in the same Writ he may have this Clause ; Vel causam nobis significes, quare mand. nostrum al. tibi inde direct. exequi noluifti, vel non potuisti,&c. And then this Writ shall be returned into the King's Bench or Common Pleas. And if he do not ferve this Writ, then he shall have a Pluries returnable into the King's Bench or into the Common Pleas. And in the Pluries is alwaies this clause; vet causam nobis significes: but not in the Alias repleg. if not that the party will have it put in the Writ. And the Plaintiff may fue all these Writs forth together, viz. the Replevin, the Alias and the Pluvies, and deliver them unto the Sheriff all atone time, if he so see good. And if the Sheriff doth not return the Pluries, then the Plaintiff may have an Attachment against the Sheriff, directed unto the Coroners.

And it appeareth by the Register, that if the Sheriff re-F turn upon the Replevin, Sicut Alias or Pluries, that he hath sent unto the Bailist of the Franchise, &c. who hath given him no answer, or that he will not make deliverance, &c. then the Plantist shall have a Non omittas unto the Sherist, that he enter into the Franchise and make Return; and if the Sherist doth not do so, he shall have an Alias non Amittas digected unto the Sherist, and afterwards a Plurius non omit, &c.

But it seemeth that that Return, Quod mandavi Bailive libertatis,&c.qui nullum mihi dedit responsum, or the Return that the Bailie will not make deliverance of the Cattel, are not good Returns. For by the Statute of west. 1.cap. 17. in the end of the Statute it appeareth, That the Sheriff upon such a Return made unto him by his Bailie, ought presently to enter into the Franchise, and to make deliverance of the Cattel taken: And so it appeareth the Sheriff may do by the Statute of Marlebridge, cap. 21. If a Plea of withernam be in the County by Plaint before the Sheriff, and the Sheriff fend unto the Bailie of the liberty to make deliverance, and the Bailie doth nothing, that then the Sheriff ex officio may enter into the liberty without any Writ directed unto him in that case.

And if the Sheriff upon the Pluries return, quod pradict B Averia prad' A cepit, & ea fugavit de Com.prad.in Com' F. per quod caeidem A repl. non potuit,&c. or if the Sheriff return. That he fent to the Bailie of the Liberty of D, who hath return of Writs,&c. who gave him answer, that the Cattel are effoined into divers Liberties, by reason whereof he cannot have view of them, nor deliver the Cattel; or if the Sheriff return, That he himself cannot have view of the Cattel to deliver them; or if he return, That after the taking,&c. that the Defendant hath effoined the Cattel out of his Bailiwick, that he cannot deliver them; or if he return, That the Defendant hath effoined them into unknown places, that he cannot have view of them, to deliver them; or if the Sheriff return, That he sent unto the Bailie of the Liberty, who answered him, that the Defendant had impounded the Cattel within the Rectory of the Church of c, for which cause he cannot deliver them, &c. Upon these Returns made by the Sheriff the Plaintiff shall have a Writ of withernam, to take as many of the Defendants Cattel, directed unto the Sheriff; and the Writ shall be such :

Rest Vico, Oc. Cum plur.tibi pr.eceperimas, quod jufte,&c. A Averia sua que B,&c. detinet, ut dicitur, vel causam nobis signific, quare mandatum nostrum plur. indetibi dire A. exequi noluisti, vel non potnisti: ac tu nobis significaveris, quod postquam pried' B Averia priea'. A cepit, in Comituum ea fugaverit, & de Com.pr.ed' in Com.C. per quod ea eidem A replegiar-non potuisti: Nos, malitie iofius Bobviare volentes in hac parte, Tibi precipimus, quod Averia pred. B in Balliva tua fine dilatione capias in Withern', & ea detineas, donec eidem A Averia fua pred', secundum consuetud.rezni nofri, replegiare possis, juxta tenorem mandatorum nostrorum prad' prius tibi, &c.

And note that in the Writ of withernam, the cause which B the Sheriff returned upon the Pluries, &c. ought to be put and rehearfed in the Writ of Withernam, as before is faid. And if the Sheriff return upon the Pluries, that he hath fent unto the Bailie of the liberty, and that he answers him that the Beafts are effoined, &c. then he shall have a withernam directed unto the Sheriff, and the Sheriff shall send his Bai. lie into the liberty to fue the Withernam; and if the Bailie do not execution, nor give answer unto the Sheriff of the Precept directed unto him, then the Plaintiff shall have a withernam directed unto the Sheriff, with Non omittas, propter aliquam libertatem,&c. quin eam ingrediaris, &c. and to take the Cattel in withernam, &c.

And it appeareth by the Register, if a man sue a Reple- C vin in the County without Writ, and the Bailie return unto the Sheriff that he cannot have view of the Cattle to deliver them; then the Sheriff by enquest of Office ought for to enquire thereof: and if it be found by the Jury that the Cattle are essoined, &c. then the Sheriff in the County-Court may award a withernam to take the Defendants Cattle. And if the Sheriff will not award a withernam, then the Plaintiff shall have a Writout of the Chancery directed unto the Sheriff, rehearfing the whole matter, commanding him for to award a withernam, &c, And he may have an Alias, and after a Pluries, and Attachment against the Sheriff, if

he will not execute the King's command,&c.

And a man shall have a Replevin of diversCattel that are D taken; Asif a man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff thail have his Replevin of them all, as well as of the Cows and Sheep

which were taken.

Vide 16 H.7. 14. that a precept to word, is as Writing.

And the Sheriff, upon a complaint made unto him of ta- E. king of the Cattle, may command his Bailie by word for to. replevy them; and the same is as well as if the Sheriff had the Bailieby made his Warrant to his Bailie to have replevied them; for good as by it may be that the Sheriff nor his Bailif cannot write, or that they may want fuch things wherewith they may write a Warrant,&c.

And the Lord shall have a Replevin if his Villains Cattel F. are taken; and yet he had not property in them at the time of the taking, but now by his claim he hath, &c. But it feemeth he shall not have damages for the taking of the Cattel, but only for the detaining of them, if the fame be found for

And if a man take Cattel for Damage feafant, and the o G.

ther tenders amends, and he refuseth it, &c. now if he sueth a Replevin for the Cattel, he shall recover damages only for the detaining of them, and not for the taking of them, for that the same was lawful.

And if the Lord diffrain his Tenants Cattel wrongfully, and afterwards the Cattel return back unto the Tenant; yet the Tenant shall have a Replevin against the Lord for those Cattel, and shall recover damages for the wrongful distraining of them, because he cannot have an Action of Trespass against his Lord for that Distress.

And if a man do distrain Cattel in one County, and drive the Cattel into another County, the party may fue a Replevin in which of the Counties he will, but not in both the

Counties.

And if the Cattel of a Feme sole be taken, and afterwards the marry a Husband, the Husband alone may have a Re-

plevin: quod vide Trin. 33 E.3. And in a Replevin, if the Plaintiff do declare, that the Defendant yet hath and detaineth the Cattel, and the Defendant doth appear, and afterwards maketh default; the Plaintiff shall have Judgment to recover all in damages, as well the value of the Cattel, as damages for the taking of them, and his costs. M. S. H.S. Ret. 108. of this weit of

#### Writ de Pone de remover le Plee.

M NTOte, that if a Replevin be fued by Writ out of the Chancery, then if the Plaintiff or Defendant will remove that Plaint out of the County into the Common Pleas, or King's Bench, he ought to fue a Writ out of the Chancery, which is called a Pone ; and the Writ shall be fuch:

Rex Vic. Lincoln' falutem. Pone, ad Petitionem petentis, coram Justic.nostris apud Westm. tali die Loquelam que est in Com.tuo. per Breve nostrum, inter A & B, de Averils ipsius A captis & in ufte detentis, ut dicitur ; & fum.per bonos Sum præd. B.quod tunc sit ibi, pr.ef. A inde respons : & habeas ibi Sum', & hoc

And if the Writ of Pone shall be removed into the Kings Bench, then the Writ is such:

Rex, &c. Pone, ad Petitionem petentis, coram nobis, ubicung; tunc fuerimus in Anglia, Loquelam,&c.ut supra.

And this Writ is fued for the Plaintiff without putting any cause in the Writ of the removement,&c.

But if the Defendant will remove the Plea in the County

[70]

upon

npon a Replevin fued by Writ, then he ought to put an evident cause in the Writ after the Test of the Writ: and

the form of the Writ is fuch :

Rex Vic, &c. Pone coram Justiciariis nostris apud Wcstm' tali die Loquel. qua est in Com. tuo per Breve nostr. int' A & B, de Averiis ipsius A captis & injuste detentis, ut dicitur; & dic. praf. A, quod sit ibi, Loquelam siam versus prad. B inde prosentur', si voluerit: & habeas ibi hoc Breve, & aliud Breve. Teste, &c. Et quia prad' B cepit Averia prad' in seodo suo pro Consutud' & Servic. sibi debitis, ut dicit', Fiat executio istius Brevis si causa sit vera, & prad' B hoc petit, & aliter non. And he may shew divers other causes: Quia pred. B. & C ceper' Averia pradin seodo ipsius B pro Consutud. &c. Fiat executio, &c. ut suprá Or thus: Quia A, clericus D, Vic, Com. prad', qui prequenter in absentia Vic. Com. illius tenet Placita ejusdem Com', est Consang. prad' A, propter quod idem Vic. savet ipsi. A in Loquela pred', ut dicitus, Fiat executio, &c. ut suprá.

And he may shew any cause which induceth any favour that the Sherist doth, or is like to do unto the Plaintist. Or thus: Quia pred. B. clamat pred. A esse nativum sum, & eâ occasione assert Averia pred'esse sua propria, propter quod Loquela illa in Com. deduci non desentut dicitur, Fiat executio, & C. ut.

Suprá.

And if a Replevin besued by Writ in any other Lords Court than in the King's Court, then the Plaint cannot be removed before the Justices by the Plaintiss, nor by the Defendant, without putting cause in the Writ; and the Writ is; Pone, ad Petition. petentis, Loquelam qua est in Com' tuo per Breve nostrum inter C & Abbat. de W & I, de quodam equo ipsus R. capt. & injuste detento, ut dicitur; & sumper bonos Sun. prad' Abbat. & I, quod tunc sintibi. pras. R. inderesp': & habeas ibi boc Breve, & aliud Breve. Ieste, & c. Quia pred. Abbat est Dom. Cur. in C, in qua Loquela illa pendet per retornum Brevis nostri, per quod idem R in Loquela pradicta in eadem Curia versus pras. Abbatem & Ijustitiam consequinon potest, ut dicitur, Fiat executio, & c. ut supra.

And if the Plea be removed at the suit of the Plaintiff, then when he hath shewed cause in the end of the Writ, he. shall say afterwards in the same Writ, Propt. quod idem Querens in Loquela sur pred' versus presat'B in eadem Curia justiti-

am confequi non poteft,ut dicitur.

And if the Plea be removed at the suit of the Defendant, then after cause shewed in the VVrit, it shall be said, propter quod idem Ballious favet ips. A in Loquela sua pred'ut dicitur, Fiat executio, &c. ut suprá.

### Writ de Recordare.

B WHen the Plaint is in the County, and the Replevin fued It appeareth there without VVrit; then if the Plaintiff or Defendant by the Rewill remove that Plaint, he ought to fue Writ of Recordare gifter, 6 & out of the Chancery directed unto the Sheriff; and the de remover

VVrit shall be such:

Rex Vic' Linc' falut. Precipim' tibi, quod in pleno Comtue re- by Recordare cordar' fac' Loquel' que est in eodem Com. fine Brevi nostro inter Pleas shall A & B, de Averiis ipsius A captis & injuste detentis, ut dic. be removed @ Record. illud habeas coram Justiciariis nostr. apud VVestim. ham & Cetali die,&c. Jub figillo tuo, & Jub figillis quatuor legal. Milit. friam: yet ejusdem Com.ex illis qui Recordar. illi interfuer'; & partibus e- these are undem diem præfigas, quod tunc fint ibi, in Loquela illa prout Courts of juftum fuerit proceffurum: & habeas ibi nomina predictor.quatuor Record. Militum, & hoc Breve. Tefte, &c. Fiat executio iftius Brevis, fi

pred' A hoc petat, & aliter non.

And thereby it appeareth, that the Plaintiff may remove 27 H. 6. 3. the Plaint by Recordare without any cause put in the Writ; 2" ... But the Defendant cannot remove the Plaint by a Recordare, without shewing cause in the VVrit, as before is said upon the Pone. And the Causes for the Defendant ought to be such; Quia pred' B in placitando afferit se Averia pred' cepisse in leperal' solo suo, ut in dampn' suo ibid', in que quidem sole pred' A clam. habere Commun. Paftur', ut dic' ; quæ quidem Loquela, eò quod tangit liber. Tenement. (ut prædict' eft) in eodem Comitat', secund' Legem & consuetud' regni nostri fine Brevi nostro placitari non debet; Fiat executio iftius Brevis, si causa sit vera, & pred. A hoc petat,

And if a Replevy be fued by Plaint in the Court of any wo graft 263: other Lord than in the County-Court before the Sheriff, then the Recordare which is fued by the Plaintiff or Defendant shall be directed unto the Sheriff, and the Writ shall

be fuch:

Rex Vic Linc. falut', Precipim'tibi, quod affumptis tecum quatuor discretis & legalibus Militibus de Com' tuo, in propria personatua accedas ad Curiam W de C, & in illa plena Curia recordari facias Loquelam que est in eadem Curia fine Brevi nostr' inter,&c & Record' illud habeas sub figillo tuo, & figill. quatuor legal' hominum ejufdem Cur' qui Recordar' illi interjuer'; & partibus,&c.ut supra. Quia præd. A est Ballious pred. W de C, Curi.e fu.e pred', & tenet Placita ejufdem Cur. & Judex infuz caufa effe non debet.

Plea 36. that

Another Recordare thus; Accedas ad Wapentag.noftr.deH; or thus, ad Hundr. noftr.de I; or thus, ad Tithingum noftrum deL; If a Recorda- & in pleno Wapentag.illo; or thus, in pleno Hundr' illosor thus dere iffue to in pleno Tithingo illo, &c. And he may shew other causes as the Case requireth. And if the Recordare be returnable in Record to the Common Pleas, and at the day of the Return the Sheriff return it \* tarde; now the party that fued that Recordare shall have a Sicut alias Recordare out of the Common that the Re- Pleas, directed unto the Sheriff,&c. And if the Plea be discontinued in the County, yet the A

moved, it is Plaintiff or Defendant may remove the Plaint into the void, if it be Common Fleas or King's Bench by Recordare, &c. and it shall be good, and he shall declare upon the same; and the Court shall hold Plea upon the same Plaint; for if the Plaint be continued in the County, and iffue joyned upon it, yet no-Br. Caufe de thing shall be removed but only the Plaint; and in the com-

mon Pleas the Plaintiff may declare a new,&c.

And in a Recordare to remove a Record out of Ancient R 2 H 8 5. But Demesin, the Writ shall say, Loquelam & processum, and not be deman- Recordum; quod vid. 39 H.6. by all the Justices; yet the ded, all the form of the Register in the Record, as before is faid; is, Et

Recordum illud habeas.

If a Record be removed out of a Court of Record by a C Recordare facias, it cometh in without Warranty, and the Court shall hold Pleathereof. But if a Record cometh in Court without a Warrant, the Party may sue a Writ, directed unto the Justices, that they proceed upon that Record shall not be que coram vobis residet. If the Recordare facias bear date D removed by before the Plaint were entred in County, yet the Record is well removed, because that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by fuch Writ which beareth date before the entry of the Plaint, it is not good.

G

I

K

# Recaption.

Writ of Recaption lyeth where a man distraineth for E Rent, or Service, or other things, and afterwards, pendant the Piea, he who distrained doth distrain again for the fame Rent or Service, or other thing, the Beafts of the party whom he had before distrained upon: then he who is so distrained shall have this Writ, and shall recover damages for the second Distress taken; and he who took the Distress shall be fined for the wrong, although the first Distress were lawfully taken, and although that the Kent or Services for which

9 H.6.58. Plea, although by cord be renot to remove Indicments. 3 H.6.30.

Ples 37. Record in bank shall be in the Franchise.

9 H.6. 58.

remover

Oyer and Terminer Recordare' by Babingzon. 1 R.3. 4. ac. Vid. 5 E.6. fo. 91. 34 H.6. 27. - Shin cont. upon a

Fine removed; and 22 H. 6. 7. which he diffraineth were arrear, &c. because by the first Distress he shall have return of the things taken, until he hath the Rent or Services for which he distrained. But for 47 E.3.7. damage seasance in his Lands a man may distrain the Beasts Fuerham of any man which he finds upon the Land, during the dascent. mage, so often as he shall find them so doing, because he distraineth them every time for a new Trespass, and new wrong done in his Land. Tamen quere.

And if the Lord diffrain for Rent or Services behind, and afterwards pendant the Plea, the Lord doth command his Servant to diffrain for the fame Rent or Service, by reason whereof the Servant or Baily do diffrain again; the Tenant shall have a Writ of Recaption against the Lord for the

fame Diftress.

And so it seemeth, if the Lord distrain his Tenant for Rent or Service, and afterwards the Servant or Baily do distrain the Tenant again for the same Rent or Service, and the Lord do agree unto that Distress, by joyning in Aid preyer of the Servant or Baily, the Tenant shall have a Writ of Recaption against the Lord. But if the Lord distrain for Rent or Service, and afterwards the Lords Baily doth distrain the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a Recaption against the Lord, nor against the Baily, although the Baily maketh conusance in the right of the Lord, &c. For it may be that the Lord had not notice of that Distress, or that the Baily had not notice of the Distress which the Lord took before for the same Rent or Service.

G But it feemeth in that case the Tenant may have an Action of Trespass against the Baily for the second Distress of his Cattelfor the same Rent or Service, for which the Lord

had diffrained before.

H But if the Lord do distrain for Rent or Services, and afterwards (pendant the Plea) the Lord do distrain the Cattel of a stranger for the same Rent, and not his Cattel who was first distrained; he who is so distrained shall not have a Writ of Recaption, nor he who was first distrained. For it behoveth him who shall have this Writ of Recaption, that he have his Cattel sirst distrained before for the same cause for which they were distrained the second time.

But if a man do distrain two mens Cattel for Rent or Service, and afterwards he doth distrain the Cattel of one of them again for the same Rent or Service; now he shall have

a Recaption alone in his own name.

And if the Lord distrain the Beasts of a stranger for Rent

or Service, and afterwards (pendant the Plea) the Lord doth distrain the Beasts of the same stranger for the same Rent or Service; the stranger shall have a Recaption as well as the Tenant, if the Beasts were taken at two several times.

And if the Writ of Replevin be abated, then the Writ of L Recaption shall abate, as it was judged in the time of K.E. 1.

And if the Lord do distrain for Rent arrear at a certain M day his Tenants Cattel, and he such a Replevin, &c. and the Lord arow for the Rent, &c. and the Tenant plead Hors de son Fee; if the Lord (pendant that Plea) distrain for Rent behind at another day after, the Fenant shall have a Writ of Recaption, because the Lords Title shall be tried by the first Plea. But otherwise it is, if the Tenant in the first Replevy plead Rien arriere, or levied by Distress, then (pendant that Plea) the Lord may distrain for the Rent behind at a day after, because the Seigniory is there consessed, and the Tenant shall not have a Recaption.

And the Tenant, or he who is diffrained, shall have aRe-A caption before any Avowry made, and may averr he disfrain-

ed for the same cause.

And in a Recaption the Defendant shall not avow, as he B shall do in a Replevin, but shall justifie the taking, &c. as he shall do in an Action of Trespassfor the relaintist shall recover Damages only in the Recaption for the Contempt that the Defendant hath done against the Law, and not for the taking of the Cattel, nor for the detaining of them. And in a C Recaption it is not material whether the first Distress be of right or not.

And if a Plaint be removed out of the County into the D Common Pleas by Pone or Recordare, and afterwards the Plaint be Non-fuit in the Common Pleas, before or after an Avowry made, the Lord after this Non-fuit may diffrain again for the fame cause, and the Tenant shall not have a Recaption, because there is not any Plea depending, and yet the Plaintist may sue a Writ of Second Deliverance upon the same Record.

And if the Lord distrain the Cattel of the Tenant and a Estranger, which they have in Common, for Rent or Service, and afterwards pendant the Plea) the Lord doth distrain the Tenants Cattel only for the same cause; the Tenant shall have a Recaption for those Cattel. But if the Lord distrain the Cattel of the Tenant only for Rent, &c. and afterwards (pendant the Plea) the Lord doth distrain the Cattel of the Tenant and stranger, which they hold in common, for the same cause; it seemeth that the Tenant shall not have a Recaption for those Cattel for the interest of the stranger. Quert.

And

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47 E.3.7.

47 E. 3.7. 9 H.6.4.

And if the Lord distrain, and the Tenant sue a Replevin, which is removed into the Common Pleas, and the Conufance is demanded by the Baily of the Freehold, and is granted, and afterwards the Baily fail to do right unto the party; if he diffrain again for the same cause, the Tenant Thall have a Recaption, because the Lord ought to remove the Plea into the Common Pleas again by Resummons, &c.

And a Recaption lieth where the Lord diffraineth other Cattel of the Tenant than he first distrained, as well as if he had distrained the same Cattel again, if it be for one and the same cause, as I conceive. And yet in 19 E. 3. the Iffue was taken upon the Property of the Cattel as that they

were other Cattel of the Plaintiff, &c.

And a Recaption lieth as well where the Lord distraineth the Tenant again for the same cause, where the Plea is depending in the County before the Sheriff as where the Plea is depending before Justices of Record.

And if the Plea be depending in the County before the

Sheriff, then the form of the Writ of Recaption is:

Rex Vic', & Monstravit nobis A, quod quumtu Averia sua, que B cepit & injufte detinuit, eid. A fine Brevi noftro replegiaffes, & dediffes diem ufg; ad prox. Com. tuum, & prad. B attachiaffes ad respond super praf. A; idem B post Attachiament illud Averia prad. A iterum cepit ea occasione qua prins ea ceperat, & ea sicut prius detinet. Et quiahoc injustum est, & manifeste contrapacem nostram, Tibi pracipimus, quod Averia prad. A sine dilatione deliberari fac', quousque capitale Placitum inter eos terminet'. Et si invener. quod præd. B Averia præd. Aiterum ceperit ea occasione qua prins ea ceperat, & ea sicut prins detinet, tunc corpus praf. B habeas coram te & cultodibus Placetorum Corone nostre ad proximum com. tuum. Et si per Ballivos tuos, per quos Averia prad. A replegiat. fuerint, & per alios probos & legal. homines de Com. tuo, convinci poter. de secund. caption. pro una do ead. occasione tunc ipsum B ita per miserecordiam castiges, qued castigat. illa in casu consimili timor. aliis præbeat delinguendi.

And if the Plaint be in the County by Writ of Replevin

pending before the Sheriff, then the Writ is fuch:

Rex. Vic. S falut. Monstravit nobis A, quod cum ipfe Breve noftrum nuver tibi detaliffit de Averiis fuis fibi repl, que B cepit & injufte detinet, & Averia illa eid. A repleg', & eidem ded fes diem ufg; ad prox. Com. turm, &c. as in the Writ be- . fore. And if the Plaint be removed out of the County by Recordare, then the form of the Writ of Recaption shall be such:

Rex

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Rex Vic', &c. Monstravit nobis A, quod cum B Averia pred.

A cepisset & injuste detinuisset, tu ad querimoniam ipsius A, prout mos est, Averia illa eid. A replegiasses, e ei dedisses diem usq, ad prox Com.tuum, pred. B.attachiasses ad respond super hoc pres' A, postmod' tibi preceperimus, quod habres Recor. Loquelæ pred coram sustice nostris apud Westm. tali die prox. praterito; idem B, pendente Placito coram præs. Justic', Averia pred. A iterum cepit, & c.ut supra.

And if the Plaint be removed out of the County by a Pone into the Common Pleas, then the Writ of Recaption

is fuch :

Rex Vic., &c. Monstravit nobis A, quòd cùm ipse Breve nostr' nuper tibi detulisset de Averiis suis sibi repleg', qua B cepit & injustè detinuit, & Averia illa eid Arepl', & ei dedisses diem usqs ad prox' Comeuum, & pred' B attach ad respond. super hoc præs. A, & postmod.preceperimus Loquelillam poni coram sustitut nostris apud Westm. tati die prox. preterit'; idem B, pendente Placito pred' coram iisse suis prox. preterit'; idem B, pendente ed occasione qua prius ea ceperat, & ea sicut prius deten, & in contemp. Precept, nostrorum justiciari non permittit. Et quia hoc injustum est, & manifestè contra pacem nostr. Tibi præcip. quòd si pred. A secritte secur de clams su prosequend', &c. tunc pone per vad', &c. pred' B, quòd sit coram sustic' nostris præd', ad respond. nobis de contemptu pred', & præd. A detransgr. pred: Et habeas ibi nomina Pleg' & hoc Breve; & Averia illa eid. A repleg. sacias. Teste, &c.

If a man sue a Replevin by Writ, and the Sheriff send A unto the Baily of the Liberty to replevy the Cattel, because that the taking was within the Liberty, and afterwards the Plaint is removed by Pone into the Common Pleas, and afterwards the Lord, or the party who distrained before, distrain again for the same cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such:

Rex Vic.&c. Monstravit nobis S, quod cum ipse Breve nostrum nuper tibi detulisset, de quodam equo suo sibi repl', quem I & A ceperunt, & injuste detinurunt, ac Ballivi Libertat. Abbat. de R de C, quibus Retorn. Brevis nostri pred. baber secisti. equam illum eidem S replegiassent, & præd. A & I attachiassen illum respondend. super hoc præs. & postmod. proceperimus Loquel. illam poni coram Justic. nostris apud Wcstm. tali die, anno regni nostri tertio; presati I & A, pendente placito predicto coram Ballivis predicti Abbat. Curia supered. coram quibus Loquela illa, juxta libertates eidem Abbati coressas, per eosd. Justic. retornata est placitand. Averia præd. Siterum ceperunt, & c. ut supra.

And

And if a Lord hath a Hundred or a Wapentake, and hath power to hold Plea de vetito Namio, &c. and a man distraineth another there, for which he fueth a Replevin within the Hundred, and, pendant the Plea there, the party who distrained before distrained the same man again for the same cause; then he who is so distrained shall have a Writ of Recaption in such form directed unto the Sheriff.

Rex Vic',&c. Monstravit nobis A, quod cum B Averia pred. A cepiffet, b injufte detinuiffet, ac Ballivi M de N, ad querimoniam ipfeus A, (prout moris eft) Averiailla eidem A replegiaffent, ac ei dediffent diem ufque ad proxim. Wapentag. predict Domini sui de N, & pred B attachiaffent ad respondend. Super hos pref. A, postmodimque tibi præceperimus, quod assumptis tecum,&c. accederes ad pred wapentag', & in pleno wapentagio, &c. fine Brevi nostro, inter ipsumA & præf. B de predict. Averiis ipfins A captis.&c. & Record.illud,&c. idem B, pendente Placito,&c. ea occasione qua prius, &c. poni, &c. as before in the C Writ of Recaption.

And now it appeareth by these Writs of Recaption, that if aman be diffrained, and he fue a Replevin by Plaint betore the Sheriff in the County, and afterwards hanging that Plaint, he is distrained again for the same cause, that he shall have a Writ of Recaption, which shall be directed to the Sheriff and the Sheriff shall hold Plea upon that Writ

of Recaption.

But if a man be distrained within any Liberty, and he sue 2 Replevin there by Plaint, or by Writ and pendant that Plaint in the Liberty he be distrained again for the same cause, by the person who distrained before; he shall not have upon that Diftress a Writ of Recaption, because the Plaint is not pendant before the Sheriff, nor before the Justices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the Plaint were removed by Pone or Recordare out of the Liberty before the Justices, then the party who was distrained shall have Recaption, as well for the Distress which was before the Writ of Pone or Recordare, as if the re-taking had been after the Pone or Recordare fued

And if a man be convicted before the Sheriff in a Writ of Recaption,&c. he shall be amerced, and render damages unto the party for the contempt. But if he be convicted before the Justices in a Writ of Recaption, he shall be fined, and not amerced, and also shall render damages unto the

party for the contempt.

39 E.3. 36.

### Writ de Withernam.

This Writ lyeth where a man taketh the Cattel or Goods E of another man, and the party such a Replevin by Writ, and an Alias and Pluries, and upon the Pluries the Sheriff doth return, that the Cattel or Goods, & c. are essented &c. by reason whereof he could not replevy them, &c. then this Writ of Withernam shall issue out of that Court where the Pluries is returned, returnable in the Kings Bench or Common Pleas: and the form of the Writ is such:

Rex Vic.Linc. sal. Quum pluriestibi præceperimus quod ju-flè&c.A Averia sua quæ B,&c.vel causam,&c.quare mandatum nostrum pluries tibi indè directum exequi noluisti, vel non potuisti; ac tu nobis significaveris, quod postquam præd B Averia præd A cepit, & in Com tuo ea sugavit de Comprædin Com B, per quod ea eidem A replegiar non potuisti : Nos, malitiæipsus B obviare volentes in hac parte, tibi præcipimus, quod Averia præd B in Balliva tua cap. in Withernam & ea detineas,donec eid A Averia sua præd secundum Legem & consuetudinem Regni nostri repl.possis, juxta tenorem mandator. nostror. pred. prius tibi,

And in the Writ of Withernam he ought to rehearse the G cause which the Sheriff returneth for which he cannot re-

plevy them: as to fay,

Ac possquam pred. B Catalla vel Averia illa cepit, Catall vel Averia illa, aut Bov. vel Equum illum elongavit extra Ballivam tuam, ità quod nullam deliberation indè ei l. A facere potuisii, sicht nobis significasii; Nos, &c. tibi precipimus, quod Catall. vel Averia, &c. as the Case, in Balliva tua ad valentiam Catall', &c. prad' A sine dilatione cap. in Withernam, & ea detineas, donce cidem A. &c.

And there are very many causes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevie them, whereof divers of them do appear in the Register, which a

man may there fee.

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And if the Sheriff do return upon the Pluries repleg that A he hath fent unto the Bailie of the Liberty who hath return of Writs, & cand that the Bailie hath given answer, that he cannot execute the Writ, because he cannot have a view of the Cattel or Goods which were taken; then the Court in which such Return is made shall award a Writ of Withernam directed unto the Sheriff, and the Sheriff shall the cupon make his Precept unto the Bailie of the Liberty; and if the Bailie of the Liberty doth not make a return thereof unto

the

the Sheriff, then the Sheriff shall return the whole matter in Court, and thereupon the Court shall award a Writ of Withernam, and a Non omittas with the same: and the

form of the Writ shall be such;

Rex Vic.B, salut. Chm plur, &c. [usque ibi,vel non potuisti] ac R de C, Ball' Libertatis S. Walrici, cui Retorn, Brevis nostri haber secisti, tibi responderit, quòd Executionem Brevis illius facere non potuit, eo quòd visum Averiorum præd habere non potuit, secutu nobis significasti; per quod tibi præceperimus, quòd Averia præd'B in Balltua sine dilat. caperes in Vithern &c ea detineres, donc eidem A Averia sua, &c. inde direct', vel causam nobis signif, &c. vel tu non potusti; ac tu nobis retornaveris, quod idem R, Ball. Libertatis præd', cui Retorn', &c. haber secisti, null' tibi inde dedit respons'. Tibi precipimus, quòd non omittas propt. Libertatem præd', quin eam ingrediar, &c. cin VVithern' donce, &c. juxta, &c. prius tibi, &c. Ieste, &c.

B And if a man distrain any mans Cattel, and he sue a Replevin by plaint made unto the Sheriff, for which the Sheriff makesa Precept to the Bailie to replevy them, and the Bailie return at the next County, that he cannot replevy the Cattel, because they are esloined, or that he cannot have view of the Cattel; then the Sheriff in the same County-Court ought to make enquiry if it be true which is returned, and if it be found so by the Jury, then the Sheriff ex officio shall make a Precept unto his Bailies in the nature of a Withernam, to take as many cattel of the other party: and if the Sheriff make such Precept to take the others Cattel in Withernam, and the Bailie will not execute the Writ, then the party may have a special Writ out of the Chancery, directed unto the Sheriff, commanding him to do Withernam, and to do execution of the first Judgment: and the Writ fhall be fuch:

Rex Vie', &c. Monstr. nobis A, quod còm B & C Averia præd' Acepis (& injuste detinuis idémque A coran te prosecutus suisset pro Averiis præd' sibi secund. Legem & consuetud. regni nostri replegiand', aclicet per Y, Ball. tuum, quem ad Averia præde de diet. A repleg. misset, to per inquisitionem (prout moris est) in plen' com' tuo sact. compertum, quod idem Ball. visum de essen præsis babere non potuit, ad eadem præse. A replegiand, per quod in pleno comtuo consideratum suit, quod Averia præd' B & C in Balliva tua caperentur in VVithernam, so detinerentur, quons seidem A Averia sua prædseumd' Legem & consuetud. Regni nostri replegiar' possintis dem tamen A Execution' tonsiderationis præd nondan assecutus est, ad dama' ipsi va A non modicum

modicum & gravamen; quia pref. A subvenire volumus in bae parte, Tibi precipimus, quod fi ita fit, Averia pred' B & Ccap. in Withernam, e ea detineas quoufque eidem A Averia sua pred' repl.poffissecundum Legem & consuetud. Regni. noftri, & juxta

considerationem pred',&c.

And by that it appeareth, that the Sheriff may award C Withernam, or Replevin fued by plaint, if it befound by enquest in the County that the Cattel are esloyned according to the Bailies return, &c. But upon the Withernamawarded in the County, if the Baily do return that the other party hath not any thing, &c. he shall have an Alias and a Pluries, and to infinite, and hath no other remedy there.

But upon a Withernam returned in the Kings Bench or D Common Pleas, if the Sheriff do return that the party hath not any thing, &c. there a capias shall be awarded against

him, and Exigent, and process of Utlagery.

In a Replevin fued by Writ, at the Pluvies returnable the Sheriff doth return, quod Averia elongata funt, &c. Now if the Defendant appear, the Plaintiff shall not have a Withernam, because the Defendant may gage deliverance. And if the Defendants Cattel be taken in Withernam, they shall not be delivered to the Plaintiff, but the Sheriff shall keep them quousq; &c. and the same appeareth by the words of the Writ: but it is faid, that it is the usage in the Kings Bench, that they shall be delivered unto the Haintiff; by which it seemeth, that the form of the Writ of Withernam there is in another manner than it is in the Register.

In a Replevin, at the Pluries returnable the Sheriff doth E return, quod Averia elongata sunt, &c. and the Defendant doth appear, and pleadeth that he did not distrain them: now the Plaintiff shall not have Withernam. And so if the Defendant at the Pluries returned appear, and plead that the the Wither- Cattelare dead in the default of the Plaintiff, the Plaintiff.

shall not have VVithernam.

And the Defendant in some cases shall have a VVither F nam against the Plaintiff: as if the Defendant both a Return awarded for him, and he weth a VVrit de Retorne habendo, and the Sheriff return upon the Pluries, quod Averia elongata funt, &c. he shall have a Scire facias against the Pledges,&c. according unto the Statute of west. 2. and if they have nothing, then he shall have VVithernam against the Plaintiff of the Plaintiffs Cattel Quod vide Ir. 7. R. 2.

Note the left cafe ! 13 H.7.the Defendant at the Exigent after nam.

### Moderata Misericordia.

He Writ of Moderata Misericordia lyeth in case where a man is amerced in a Court-Baron, or other Court A which is not a Court of Record, outragiously for Trespass 14H.4.4 or other offence; then he may fue this Writ directed unto the Lord of the Court or unto his Bailies, commanding them, that they moderately amerce the party according unto the quantity of the Trespass,&c. And this Writis founded upon the Statute of Magna Charta. cap, 14. Quod nullus liber homo amerciatur nifi fecundum quantitatem delicti,&c.And the Process upon this Writ is Alias and Pluries, and Attachment, and the Attachment shall be awarded against him against whom the original Writ was sued; and the form of the Writ is fuch:

Rex Ball' I de S salutem. Monstravit nobis C, quod cum ipse nuper amerciatus effet in Cur.pred' domini vestr. de I pro modico B delicto, in quod incidit, vos abeo gravem exigitis redemptionem, contra tenorem Magna Charta de Libertatibus Angliz, in qua continetur, Quod nullus liber homo amercietur nife fecund' quantitatem delicti, & hoc falvo Contenemento fuo, Villanis salvo wainagio: Et ideo vobis precipimus, quod à pref. C moderatam capiatis Misericordiam, secundum quantitat. delieti illius, ne clamor ad nos veniat inde iteratus. Tefte, &c.

And the Attachment shall be always directed unto the Sheriff, and the Writ shall be such :

Rex Vic',&c. Si A fecerit,&c. tune fumm.B & C,Ball.D.de I, quod fint coram Juftic.nostris apud Westm',&c. oftens.quare,cum idem A nuper amerciandus effet in Hundred.vel Cur. dicti dom. fui de I pro modico delicto, in quod incidit; & nos adrequisition.ipsius A praf. Ball. præceperimus, quod juxta tener' Magn' Charta de Libertatibus Ang. moderatam ab eo caperent Misericord', secund. quantitatem & modum delicti illius; iidem Ballivi, fretis mandatis noftr. pred', praf. A graviorem inde redemption per varias districtiones torquere non ceffarunt, in nofri contempt', & ipfius A grave dampnum, & contra tenorem Charte prad', ut dicitur. Et habeas ibi Sum', &c. Tefte,&c.

And if a man be amerced in a Court-Baron, where he did not any Trespass, but it is so presented by the Enquest, &c. C yet it seemeth he shall not have this Writ, if the Amercement be not outragious: but if the Steward of his own head will amerce any Tenant or other party without cause, I conceive the party shall have an Action of Trespass, if he be difrained for that Amercement, and the party ought not for to

fue his Writ of Moderata Mifericordia.

If a Feme covert be amerced for a Trespals, &c. if the p Husband be distrained for the same, he shall have this Writ,

if the Amercement be outragious.

But what shall be said a moderate Amercement, and what not, appeareth by the words of the said Statute, which faith Secundum quantitatem delissis. By which it seemeth that if it exceed the value of the Trespass, it is not a moderate Amercement; and that shall be intended for the value of the Trespass which is done unto the Lord, and to him who shall have the Amercement: for if one Tenant do Trespass unto another Tenant, he shall be therefore amerced in the Lords Court by presentment of the Trespass; but that Amercement shall not be unto the value of the damages which is done unto the Fenant, but having regard unto the wrong and offencedone unto the Lord for the wrongs done unto his Tenant.

And if a man be Non-suit in a Court-Baron, he shall be pramerced, and if it be outragious, he shall have this Writ of Molerata misericordia: and so shall the Desendant if he be amerced in any Suit brought against him, so or that he makes default to wage his Law at the day given him in any Plaint sued against him, &c. And if the Amercement be not moderate, he shall have this Writ

of Moderata misericordia, &c.

In a Court-Baron, if two be amerced for one Trespassoutragiously, they shall not joyn in a Moderata misericordia, for
they shall be severally amerced, although the Trespass be
joyntly done. And so is it in a Flaint sued by two, if they be
Non-suit, the Amercements shall be several, and they shall
not joyn in Moderata misericordia; yet if an Amercement be
set joyntly spon them, then they shall joyn in the Writ. But
it seemeth this Amercement ought to be affected by persons
certain, when they are amerced for any Trespass. And if the
Amercement which is set be affected by his Peers, then this
Writos Moderata misericordia doth not lies for then it is according unto the Statute of Mag. Chart, quad wide to E. 2:
in Title of Actions upon the Statute in the Abridgement.

And it is called *Mispricordia*, in English Mercy, for the Hinallness thereof, by which it seemeth it ought to be less than the offence and then it seemeth they shall be severally americal for a joynt offence, because one shall not be charged for the offence of another; but they shall equally bear

the charge, and pay the fum affeffed.

And in the common Pleas, the course is, when there are I divers Desendants, to make several Estreats of the America.

ments.

ments, and to deliver them unto the Clerk of the Affile, and he shall deliver them unto the Coroners, and they use to

afferre the Amercements leverally.

And if divers Demandants be amerced in a real Action for their Non-suit, they make the Estreats severally upon them, and deliver them as before unto the Clerk of the Atlife, who delivereth them over unto the Coroners to afferre the Amercements.

But in a personal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot shew how the usage hath been to make the Estreats against them; but it seemeth with reason, that all shall be done in one manner. For it cannot properly be faid that a man hath Mercy shewed and offered unto him, if he shall pay, or shall be put to more charge for the offence of another perion, which himself hath not done: For the nature of the word (Mercy) is, that a man shall not be punished so much as he harh deferved. By which it appeareth, that every Americanent shall be or ought to be severally assessed upon every one for his own offence, and that to a lefter fum than he deserveth to pay. \ Quare the usage and manner thereof in the Common Pleas and look the Statute of West. 1. ca. 18. by the equity of which Statute the ufage is accrued, and doth continue in the Common Aleas and King's Bench, and before the Justices of Assiscand the Clerk of the Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clerks of the Aflifes, to deliver them unto the Coroners to afferre the Amercements; and the Coroners do affess the Amercements and deliver them unto the Clerks of the Attifes, and they deliver them back unto the Clerk of the Warrants, who maketh the Estreats: and then one of the Juffices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Estreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the form of the Estreat is such:

Staff. De Henr. Hart & VVill. Maner, quia non habuerunt Johannem Brok napar de B in Compræd. Nom', quoniam manuceperunt, Sc. De Johanne N, pro fe & Pleg fais, qui a non est prosecutus Breve furm verfus NH te K in Compred Husbandman in Placito Debito, Je. De Stephano White, pro falfo clam. fuo verfus D de, Oc. in Placito Detentionis, Oc. And fo the Effreat doth rehearfe the cause for which he was amerced, &c. For the Justices do not affest any sum for any Amercement upon any person, but make their Entry as abovesaid; and then the Coroners do fet the fun upon the heads of every of

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them; as upon every one of them 4 s. or 6 s. as they shall think fit in their discretions; viz. severally upon every of them.

And by the Statute of Magna Charta, cap. 14. no Spiritual B person shall be amerced according to his Spiritual Benefice, but according unto his Lay-see, and according unto the quantity of the Trespass; and is the be otherwise amerced, he shall have a Writ upon the said Statute against the Sheriff, or him who amerced him. and the Writ shall be such:

Rex Vic', &c. Quon in Magn. Charta de Libertat. Angl. continetur, Quod nulla Ecclesiastica person amerc. secundum quantitatem Benesic. sui Ecclesiastica, sed secundum Laicum Feod. suum, ac jam ex querela S, Person', &c. accepimus, quod licèt isse nullum Laicum Feod. tentum in sum ex querela S, Person', &c. accepimus, quod licèt isse nullum Laicum Feod. teneat, tu tamen ipsum S in Turno tuo, in Hundredo tali, super aliquibus corante in eodem Turn. præsentat', isso S super bis non summonito, nec legitime convicto, provoluntate tua graviter amerciassi. Amerciamentum illud de bonis suis Ecclesiassics levare intendis minus juste, in issius dampnum non modicum, & contra tenor. Charte prædict: Nos, notentes issum S in hac parte prægravari, tibi praccipimus, quod si tid est, tunc issum S coram te taliter amerciar', seu Amerciament. aliquod de bonis suis Ecclesiassics levari non sac', contra tenorem Charte supradict'; & Distriction', si quam, &c. Teste, &c.

And upon this he may fue an Al and Pl, and Attach. un-C lefs the Sheriff do according to the Writ directed unto him.

And it feemeth that the party may five a Writ upon the D Statute by a Pone, &c. if he will, against the Sheriff or the other who amerced him, because that the Statute is a Prohibition in it self, and need not see such Writ as aforesaid. And by the Statute of Magna Charta every Amercement in a Court-Baron ought to be afferred by two Tenants of the Mannor upon Oath And if the Steward or Baily will assess any Amercement without Afferment, then he who is amerced shall have such Writ:

Rex Ballivis Episc. W de Sfalut. Quum în Magna Charta de Libertatib. Angl' contineatur, Quod nullus liber homo amercietur pro parvo delicto nist secundum modum ipsius delicti, Spromagno delicto secund magnitudinem delicti, salvo Contenemento suo. & Mercator eodem modo salva Merchandisă sua, & Villanus alterius quan nostri eodem modo amerciet, salvo wainagio suo, si incider' in manum nostrangig nulla Misericordiar. pred. ponat. nist per sacrament. proborum & legalium bominum de vish', prout in eadem Charra plenius continetur; ac jamex querela bominum & Tenentium Manerii prad. acceperimus,

quest.

quod vos ipsos homines & Tenentes, cum in Cur. ejusdem Manerii in Mifericordiam inciderint pro aliquo debit', ad magnas pecuniar. summas voluntarie assidetis, non permittentes quod Misericordia illa per facrament. hominum & Tenentium ejufdem Manerii ponatur, in ipsorum homin. & Tenentium dampnum non modicum. & contra tenorem Charte pred': Nos volentes Chartam ill. in omnibus & singulis suis articulis inviolabiliter observari, vobis pracipimus, quod ab hujusmodi summis super bomin. & Tenent' prad. quum in Misericordiam inciderint voluntarie affidend pentius desistentes, Misericordiam hujusmodi per facramentum proborum & legalium hominum equidem Cur. poni permittatis, juxta tenorem Charta prad'. Tefte, &c.

And he may fue an Alias and a Pluries thereupon, vel causam nobis significes, and afterwards an Attachment against the Bailies, or him who affelieth the Amercement.

#### Writ de Nativo babendo.

He Writ de Nativo habendo lieth for the Lord who claimeth the inheritance in any Villain, when his Villain is run from him, and is remaining within any place out of the Mannor unto which he is regardant, or when he departeth from his Lord against the Lords will: and the Writ shall be directed unto the Sheriff; and if the Sheriff will not serve the Writ, he shall have an Alias and a Pluries, and Attachment against the Sheriff, if need be-

But if a man have an Estate but for term of life or for years in a Villain, it seemeth he shall not have this Writ of Nativo habendo, because this Writ is in the nature of a Writ of Right for to recover the inheritance in the Villain, and the same appeareth by the Count in the Writ. Quare Vid. 1 & 1

And the Sheriff may seise the Villain, and deliver him 173. Where unto his Lord, if the Villain confess unto the Sheriff that lieth, and he is his Villain; but if the Villain fay to the Sheriff; that he out of what is Frank, then it feemeth that the Sheriff ought not to feife Court. him: as it is in a Replevin, if the Def. claim property, the And Vid. Sheriff cannot replevy the Cattel, but the party ought to I E. 4. 8. 2 fue a Writ de proprietate probanda; and foif the Villain fay good Cafe. that he is a Free man,&c. then the Sheriff ought not to feile 7 H.4.46. him, but then the Lord ought to fue a Pone to remove the Plea before the Justices in the Common Pleas, or before the Justices in Evre. But if the Villain purchasea Writ de Libertate probanda before the Lord hath fued the Pone to remove the Plea before the Justices, then that Writ of Libertate

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Libertate probanda is a Superfedeas unto the Lord, that he proceed not upon the Writ of Nativo habendo till the Eyre of the Justices, or till the day the Plea be adjourned before the Justices, and that the Lord ought not to seise the Villain in the mean time. But at this day the Writ of Libertate probanda is of little effect, because by the Statute of 25 E. 3. cap. 8. the Lord may seise his Villain, and alledge Villainage in an Action brought against him by the Villain, although he hath a Writ de Libertate probanda depending, which is adjourned before the Justices in banco, or the Justices in

Eyre.

And if the Lord fue a Nativo habendo, and the Villain D purchase this Writ of Libertate probanda, by that the Sheriff shall not proceed farther in the Writ of Nativo habendo, but the whole Plea shall be adjourned before the Justices in Eyre; and then the Writ of Nativo habendo and the Record shall be sent before the Justices in Eyre, and the Lord shall declare thereupon, and the Villain shall make his defence, and plead thereunto; and the Villain shall not declare upon the Writ de Libertate probanda, nor any thing shall be done thereupon; for that Writ is but a Supersedeas to surcease for the time, and to adjourn the Record and the Writ of Nativo habendo before the Justices in Eyre: and that appeareth by the forms of the Writs of Nativo habendo, and of Libertate probanda, which are such:

Rex Vic'salut'. Præcipim. tibi, quod justè & sine dilatione E sac'haber' A de C, B Nativum & sugitivum suum, cum omnib' catallis shis, & tota sequala sua, ubicunque inventus suevit in balliva tua, nisi sit in Domin' nostro, qui puri de terra sua post coronat' Dom' H. Reg', ssiii Regis Johan'. & probibem super sorissatt' nostr, ne qui eum injustè ditinzat. Teste, &c.

B

The form of the Libertate probanda is fuch :

## Libertate probanda.

R Ex Vic', &C. Monstraverunt nobis A, & B soror ejus, quod & cùm ipse libere homines sint, & parat' libertatem suam probare, F, clamans tas Nativas suas, vexat eas injuste: Et ideotibi precipin', quod si pred' A & B secerint te secur' de libertate sua probanda, tunc ponas Loquelam illam coram sustice nostris ad primas Assis, cum in partes illas venerint, quaa bujus nodi probatio non pertinet ad te capiend; & interim eist.

A & B paceminde babere sac', et dic' pref. F, quod tunc sit ibi, Loquelam suam versus presat' A & B inde prosecutur', si volnerit Et babeas ibi boc Breve. Teste, &c.

And now by these two Writs it appeareth, that the Lord who fueth the Writ de Nativo habendo, shall pursue his 11 H.4.48. Plaint upon the Writ of Nativo habendo, and shall declare Gascoign ac. thereupon,&c. and that the Villain shall make defence, and upon that Writ de Nativo habendo the Freedom shall be tried. And also it seemeth by these Writs, that a Writ de Libertate probanda doth not lie, if not upon a Writ de Nativo habendo fued out before by the Lord.

But it appeareth in 12 H. 2. Itin. North. that the Villain Fitz. Villain fued a Libertate probanda , & obtulit fe at the fourth day 420 39. against the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchifed; and he had a Writ unto the Sheriff, that he do not suffer the Lord to trouble him after: quod vid. in Title Villainage in the Abridgment; and vid. 47 H.3.a good

Case of that matter.

And when he fueth the Nativo babendo, he shall enter a age 3. Plaint before the Sheriff in the County, as if he shall do if he fue a Replevin by Writ unto the Sheriff, he ought to enter his Plaint before the Sheriff; fo shall he do upon the Native habendo: and the Plaintiff shall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of Libertate probanda that Plaint shall be removed before the Justices of Eyre, or before the Justices de Banco, and then the matter shall be tried before them, &c. Or the Lord may remove the Plaint by a Pone before the Justices of the Common Pleas, and thereupon he shall have Process against the Villain,&c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the words in the Writ of Libertate probanda, viz. Quia bujus modi probatio non pertinet ad te capiend', &c.

And it is good for the Lord, that when he fueth the Native habendo unto the Sheriff, that forthwith he fue his Pone unto the Sheriff, to remove the Plaint before the Justices of the Kings Bench: for if after the Nativo habendo fued, the IT H.4.4. Lord fue a Pone to remove the Plaint before the Justices de Gassign. Banco, and before he delivereth the Pone to the Sheriff, the Villain fueth Libertate probanda, and delivereth the fame Old Nat. to the Sheriff, by which the Sheriff adjourneth the Plaint Bre. 46. before the Justices in Eyre, and returneth the matter upon 25 E.3.49. the Pone before the Justices of the King's Benchmow the Ju- Villainary 12. flices of the Bench ought not to proceed upon that Pone a- that the pargainst the Villain, because that the Sheriff hath returned, that ty is without he hath adjourned the matter before the Justices in Eyre by not against theWrit of Libert. probanda, quod vid. Hil. 26 E.3 and yet the the Sheriff.

Pone was of elder date than the Writ de Libertate probanda, but was not delivered unto the Sheriff before the Libertate probanda.

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And if a man fueth feveral Writs of Nativo habendo a. C gainst two, the two may joyn in a Libertate probanda, not-

withstanding the several Writs.

**E.4.16.** by And a man can joyn in a Writ of *Nativo habendo* but two D Marin, all Villains, but in favour of liberty many Villains may joyn in

of the bloud a Libertate probanda.

but if they be of the half-bloud they hall nor joyn.

3r. Vullain may fue a Libertate pro- E banda before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices de Banco, it seemeth it is good, and they shall proceed thereupon as if it were before Justices in Eyre.

mage 68. In a Writ of Niefe, if the Plaintiff be Non-suit after F 6 E. 2. Vill. appearance, the Defendant shall be for ever enfranchised; 26. after a Non-fuit he quod vid.M.12 E.2. and upon departure in despite of Court, where he appeareth, and faith he will feek counsel, and was enfranafterward he is demanded, and maketh Default, there the chifed during the Villain shall be for ever enfranchised; and so upon a Retraxit, Plaintiffs If the Plaintiff fay that he will not purfue his Writ of Niefe, life. Br. Vilthe Defendant shall be enfranchised for ever. lainage 26.

29 E. 2. com. before Appearance. 19 E.2. Vill. 31. 39 E.2. Füz. Vill. 34. the Pl. count upon a Confession, and the Def. acknowledge it, and after the Plaintiff was Non-suit, and per Cur. it is an Enfranchisement for ever. 30 E. 1. Vill. 46. Harvy & Minon, she is enfranchised but during the Marriage. Broughton com. King took the difference where the Lord marrieth the Niese, and where a stranger marrieth her.

And if a Free-man marrieth a woman who is a Niefe G 28 AB.34. Br. Vill. 23. unto another, she shall be for ever free, although that the A frankman Husband dieth, and she furvive him, and that by Britton in marries a his book in favorem libertatis. And it stands with reason Niefe with Licence, the that the Law be such, because that she and her Husband are but one person in Law, and she ought to be of the same na Lord enfeoffed I.S.the ture and condition to all intents as her Husband is; but the Husband di- Husband is for ever free without any condition in Law or ed, the Wife otherwise, and by consequence the Wife ought to be of the is Niefe as fame condition and nature as her Husband is; and then if before.V. 18 he be once clearly discharged of Villainage to all intents, E 2. Vill. 35. The cannot be a Niefe afterwards without her own special cont. and there by act, as by Divorce, or Confession in a Court of Record, and that in favour of Liberty, for a Free-woman shall not be Deven the remaineth Villain, for taking of a Villain to be her Husband. Niefe, but

Note, our the Scifure is sufpended. 13 H. 3. Vill. 4E the shall not be produced to prove Villainage during the Coverture. 30 E Vill. 46.cont, 31 E. 3. Vill. 21. cont.

In a Writ of Niese it behoveth the Lord who sueth the 13 E.1. vill. Writ to bring with him two persons at the least who are of 38. 19H. 6. the Villains bloud, that will consess them to be Villains, 32. ac. 19 E. otherwise the Writ shall abate: And what shall be sufficient proof, what not, see in the Title of Villainage in the A-male shall bridgments. But in a Nativo habendo, after the Plea is not be removed by a Pone, if the Desendant will consess himself to brought to be Villain, then the Plaintiss needeth not to bring any proof thereof.

I If two bring a Nativo habendo, the Non-suit of one of vill. 36.3c. them is the Non-suit of them both; for Summons and Old Na. 2r. Severance lieth not in that Writ. But in a Libertate probanda 46. ac. it is otherwise, for there the Non-suit of the one shall not Old Tenures

prejudice the other.

And it appeareth by the Register, that the Sheriff cannot feise the Villain by force of this Writ of Nativo habendo, although that the words of the Writ are, Haberi facius A nativum & fugitivum sum, for these words give him power to hold Plea, and not otherwise, as it appeareth in 2 H. 4. in a Faux Imprisonment. But if the Villain doth consess, unto the Sheriff that he is a Villain, then it seemeth reasonable that the Sheriff ought to seise him, saving the Opinion of that Book. But the Statute now maketh the matter clear, that the Lord may seise him, and so the Sheriff at his request. And the Process in the Nativo babendo is Summons,

Attachment, and Diffress.

M In a Nativo babendo the Plea was removed by a Pone, and the Sheriff returned thereupon Nonestinventus, for which a Capias was awarded, and after upon return of Non estinventus a Latitat was awarded, upon a Surmise made that he was in a forein County. P. 7 H.6.

And in the Libertate probanda the Process is as upon the Pone sued to remove a Plaint in the County upon a Replevin, Sum', Attachment, and Distress. And the form of the Pone

upon a Nativo habendo is fuch:

Rex Vic', &cc. Pone ad Petitionem Petentis, Loquel quæ est in Com. tuo per Breve nostruminter A & B, quem idem A clam. Nativum & sugitivum suum, & sum', &cc. præd. B, quod tunc sit ibi, præs. A inde respons. Et habeas ibi Sum', & hoc Breve,

& alind Breve.

And if the Villain do remain in Ancient demein of the King in the Kings hands, and hath remained there by a year and a day, then the Lord cannot have nor maintain this Writ of Nativo habendo folong as he remained there: But if he hath not remained within the Ancient demein of the King

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King a year and a day, but for half a year, or other time which doth not make a year and a day, then the Lord shall

have such Writ unto the Sheriff:

Rex Vic',&c. Præcipimus tibi, quod nisi A, quem B clamat Nativum & sugitivum suum in Com. tuo, per Breve nostrum manserit in Dominico nostro de S per unum annum & unum diem sine calumnia, non remancat Loquela præd. in Com' præd', en quod manserit in Dominico nostro per minus temporis. Teste, &c.

But it appeareth by the Writ, that if the Lord claim him within the year and day that he came into the Ancient demess, that then the Villain shall not have advantage of his slaying there: but it seemeth that the Lord ought to claim the Villain within every year and day that the Villain stayeth within Ancient demess, as he shall make his continual claim to save his Entry into any Land. But if the Villain do remain in any other Mannor than in Ancient demess, which is in the possession of other Lord than the King, and there stayeth a year and a day, or for many years, without any claim made by the Lord, notwithstanding that the Lord may take and seise him, or have a special Writ of Nativo habrado against his Villain directed unto the Sherist, as above is said.

If a man purchase a Villain of another unto him and hisb Heirs, and the Villain runneth from him, he shall not have this Writ de Nativo habindo, because he hath no proof of his bloud who will confess them to be Villains unto the Plaintiff; and if he bring men of the Villains bloud, who confess them to be Villains to a stranger, and not to the Plaintiff, the same is not sufficient proof. Quaretamen.

And the Lord may have a Writ unto the Sheriff to affift C him to diftrain his Villains, and the Writ is: Rex Vic, &c. Præcipimus tibi, quòd sis in auxilium A de F, ubi ipse non sufficit ad distringend' Villanos suos de N. ad faciend' ei cons. & servitia debita & consueta. Teste, &c. See the Statute An. 1 R.2.c.6.

And when the King makes Tallage of his Ancient demesn D Lands in his hands throughout the Realm, then the other Lords who have Ancient demesn Lands of the King in Feefarm shall have such Writ to tax them; and the Writ is such:

Rex Vic', &c. Quia Dominica nostra per Angl. talliari secimus, tibi pracipimus, quod si Manerium de Calequando suerat Dominicum nostrum, vel Progenitorum nostror, quoudam Reg. Angl', & hucusque consueverat talliari, tunc A rationabile Talliagium Talliagium habere fac'de liber. Tenentibus suis in Manerio prad.

ficut prins fieri consuevit. Tefte,&c.

And if the Kings Villains do convey themselves out of the Mannor, then a special Writ shall be directed unto the Sheriff, that he enquire by the Oaths of honest and good men the Names of them, and where they abide, and that he make them return, and abide within the Mannors as be-

If a Woman fueth a Writ of Libertate probanda, the form of the Writ is fuch: Monstravit nobi: Alicia, quod cum ipfa libera famina fit,&c. et parata libertatem fuam,&c. ut supra.

#### Writ de Securitate Pacis.

G This Writ lieth when a man is an ion.

ther will beat or affault him; and lieth properly where one man doth threaten another man to kill him, beat him, or affault him; then may he come into the Chancery, and pray to have such Writ unto the Sheriff, and the form of the Writ is fuch.

Rex, Vic' Linc' falut'. Quia A de B nobis gravit' conquest est, quod C ei de corpore suo manifeste minat'; Tibi præcipimus, quod eidem A de præf. C firmam Pacem nostram, secundum consuet' Angl', habere fac', ita quod secur. sis, quod eid. A de corpore Suo per pref. C vel per procurationem suam damnum vel pericalum non eveniat. Teste,&c. Or thus: de incendio domorum suarum manifeste minat'; Tibi præcipimus, &c. ita quod, &c. eid. A de domibus suis præd. per bujusmodi incendium dampnum. &c.

And a man may have a Writ for the fafety of his body and for the burning of his houses all in one Writ. And he may have an Alias, and a Pluries, and Attachment against the

Sheriff, if he do not his office, &c.

H And by the ancient course of Law he ought to take his Oath upon a book, before he have this Writ, before a Master of the Chancery But now they use to sue forth such Writes by 11 21 fee: by their friends, who will sue for them without any Oath pr: Co. Santa: made; and the same is ill done, because they are many times fued, more for Vexation than for any good cause; and the Justices of the Kings Bench will not grant any Writ for Surety of Peace, without making Oath that he is in fear of corporal damage: and the Justices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of Peace, if the party who doth require the fame will not take his Oath that he requireth the same not for malice, but for the fafety of his body.

Thy is all aformed p state 21 gare of god vo:

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And if a man hath fued a Writ against one directed unto A the Sheriff, and the Sheriff take fecurity of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he which demanded the Surety of Peace shall have Attachment against him to find Sure-

ties; and the Writ is fuch:

Rex Vic', &c. Si A fecerit, &c. pone, &c. B, quod fit coram Justic',&c. oftens. quare cum præf. B præd.A de corpore suo minaret', & præf. A ea occasione Breve nostr. de Pace ind. habend' tibi detuliffet, idem B, licet Securitat. tibi præstiterit, quod per ipsum vel procurat' suum praf. A de corpore suo damnum vel periculum non evenir', id. B nihilominus in prafat' A apud W vi & ar. insult. fecit, & ipsum, &c. in nostri contempt. manifest', & ipsius A grave damnum, & contr.pacem nostram : & babeas ibi Pleg. is hoc Breve. Tefte, &c.

And upon this Writ the Plaintiff shall recover damages, and the Defendant shall be fined for his contempt, if he be

found guilty.

And if any one will have a Writ for furety of the Peace B against any one who dwelleth within the Cinque-Ports, then he shall have a Writ out of the Chancery directed unto the Constable of Dover, and unto the Warden of the Cinque-

Ports, and the Writ shall be such:

Rex dilecto & fideli suo N, constabulario Castri sui Dover, & Custod' Quinque Portuum suorum, salutem. Mandamus vobis, quod audita querela A , de eo quod B , qui eft de Libertate Quinque Portuum, &c. minat', vocatisque coram vobis partibus præd', auditisque hinc inde eorum rationibus, eidem A super hoc debitum & festinum justitiæ complementum fieri faciatis, prout de jure & secundum legem & consuct. Portuum prædictorum fuer. faciend, & alias in casu consemili fieri consuevit. Telte.&c.

But it is a common opinion, The Security which the She- C riff ought to take of the party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to fay, to bind the party and his Sureties by bond, that he keep the Peace, and that he burn not the houses, &c. But now after the Statute of 1 E. 3. cap.6. which appointeth that certain persons shall be assigned in the Chancery to keep the Peace, there are other forms of Writs, for the eate of the People who will have the Place against other perions, which Writs shall sine out of the Chancery; and some of them are directed auto the Justices of the Peace, and unto the Sheriff, and fome are directed only unto the Sheriff: and thefe Write are of other forms, which is such:

Rex

D Rex dilectis & fidelibus fuis, I,&c. & focis fuis Jufticiariis nostris ad Pacem nostram in com. S conservand. assign' salutem. Or thus, custod' Pacis nostra in com' S,&c. & Vic'einsd. Com', & corum cuilibet, falutem. Or thus, Vic' S falutem. Supplicavit nobis A, quod cum ipfe de vita & mutilac. membrorum Suorum, necnon de incendio domorum suar', per E graviter & manifeste comminatus existat, velimus pro securitat. ipsius A in hac parte provider': Nos Supplication præd.annuentes, vobis, veltibi præcipimus, firmiter injungentes, quod præd' E coram robis, vel te, corporaliter venire faciatis, & ipsum ad sufficientes Manucapt' inveniend', qui eum manucapere voluerint sub certa pæna fibi per te vel vos rationabiliter imponend', pro quo nobis respondere voluerint, vel volueris; or thus, Et ipsum E ad sufficient' Securitat' inveniend', sub pana centum libr. ad opus nostrum solvend', vel quilibet eorum sub pæna,&c. quod ipse dampn' vel malum aliqued eidem A de corpore suo, vel de domibus suis per hujusmodi incendium, non fac', nec fieri procurabit, quovis modo compellatis, vel compellas. Et si hoc coram vobis vel te facere recusaverit, tunc ipsum E proxim. gaol.nostræ committatis, vel committas, in eadem salvo custod. quousque hoc gratis facere voluerit. Et cum Securitat. illam fic ceperitis, vel ceperis, nos inde in Cancellaria nostra sub sigillis vestris vel alicujus vestrum, vel sub sigillo tuo, distincte & aperte sine dilatione reddas certiores, certificetis, vel certifices indilate, hoc Breve nobis remittentes, vel remittens.

And for this form of Writ, when the Writ is in the plural number, the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the fingular number, the Writ is directed unto the Sheriff only, or unto

one Justice only.

And if the Husband threaten his Wife to beat or to kill See 25.6.f.

her, she shall have this Writ:

Supplicavit nobis A uxor B, quod cum ipsa de vita sua comutilatione membrorum suorum per præd.B,&c. [ut suprà,usque ibi, respond volueris] quod ipse præs. A bene co houeste tractabit o gubernabit, ac dampn. O malum aliquot eid. A de corpore suo, aliter quam ad virum suum ex causaregiminis o castigationis ux. sua sicité o rationab. pertin. non sac, nec sieri procurabit, quovis modo compellatis,&c.

And if a man be in variance with other men, and he is in doubt that damage or hurt will come unto him, or his Servants, or his Goods, by reason of this variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his body, or his servants, or other

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his goods, in a certain fum. &c. And if they will not find Security, that then he arrest them and keep them in Prison, until they will find Sureties: And that the Sheriff certifie all that is done upon the same into the Chancery, upon pain,&c. as it appeareth by the Register. And that Secu- A rity ought to be taken by Recognisance, as it seemeth; tamen quare. And when a man hath purchased such Writ of Supplicavit, directed unto the Justices of Peace, or unto the Sheriff, or unto both, against any man, then he against whom the Writ is fued may come into the Chancery, and there find Sureties in the Chancery, that he will not do hurt or damage unto him that fueth the Writ; and then upon that he shall have a Writ of Supersedeas out of the Chancery, directed unto the Justices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties in Chancery according to the Writ of Supplicavit, and reciting the Writ of Supplicavit, and the manner of Security that he hath found, and the fum of mony in which they are bounden; commanding the Justices and Sheriff, that they surcease to arrest him, &c. or compel him to find Sureties,&c. and if they have arrested him for that cause, and for no other, that then they deliver him, &c. See the form of the Writ in the Register. And if the party who ought to find Surety cannot come into the Chancery to find fuch Surety, then his friend may purchase a Supersedieas in the Chancery for him, reciting the Writ of Supplicavit, &c. and that fuch a one and fuch a one are bounden for him in the Chancery in fuch a fum, that he shall keep the Peace according to the Writ of Supplicavit: and the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take Surety of the party himself, according to the Writ of Supplicavit, for to keep the Peace, &c. and that then they surcease to arrest him; and if they have arrested him for that cause, that they then deliver him.

And fonctimes the Writ of Supplicavit is made return-Bable into the Chancery at a certain day: and if it be fo, then if the Justices do not certifie the Writ, nor the Recognifance, and the Security which is taken, the party who fued the Supplicavit flall have a Writ of Certiorari directed unto the Justices of Peace, to certifie the Writ of Supplicavit, and what they have done thereupon, and the Security which is found, see, and so the party shall have such Certiorari unto the Justices of Peace, to certifie the Security taken upon Supplicavit, although the Writ of Supplicavit be not re-

zurnable in the Chancery.

And

And so if a man demand surety of Peace in the County against any man, he shall find Sureties in the County before the Justices of the Peace,&c. He who demandeth the security may fue a Writ of Certiorari directed unto the Justices of Peace, to remove the furety of Peace, and the Recognifance taken thereupon; and to certifie that Recognifance, and fecurity taken under the Seals of the Justices of Peace, or one of them. And if the Certiorari be fued upon a Writ of Supplicavit, then the Certiorari shall rehearse the Writ of Supplicavit: And if it be fued upon furety demanded in the County without a Supplicavit fued, then the form of the Writ of Certiorari is fuch:

Rex Custodibus Pacis sue in Com.L, et corum cuilibet, sal. Volentes certis de causis certiorari super tenorem cujusd. Securitatis Pacis nuper coram R B et fociis suis cuRodibus Pacis nostræset Just nostris ad diversas Felon', Transgr. et Malefacta in Com. Laudiend' et terminand' assign', de R de W, de eo quod ipse damn. vel malum aliquod B de F, aut alicui populo nostro non fac', nec fieri procurabit, ex officio vestro capt', que quid. Securitas penes vos residet, ut dicit'; vobis mandamus, quod nos inde in Cancell. nofira sub sigillis vestris vel unius vestr. diftinct. et apert. fine dilatione reddatis certiores, hoc Breve nobis remittentes. Tefte,&c.

And when the Writ of Supplicavit is directed only to the Sheriff, then the Certiorari shall be directed unto the Sheriff only, to make return of the fecurity found, if he have

taken any fecurity,&c.

And if a man find Sureties to keep the Peace against certain persons before the Sheriff, without any Writ of 17. by FiSupplicavit sued by him who demandeth surety, and without news, by the the Writ used of ancient form; then the party who de- Common manded the furety may have a Certiorari unto the Sheriff, Law the to certifie the security taken by him into the Chancery,&c. Sheriff is without making mention in the Certiorari of any Writ fued Confervator forth to cause the Sheriff to take such security; and by Pass. that Certiorari it feemeth, that the Sheriff ex officio may cause the party to find surety to keep the Peace, if any one Vid. Lamb. pray the Sheriff to have fuch furety, and that the Sheriff 110.11. and bind them by Recognifance, and that he certifie the fame now by the into the Chancery by the Certiforari: for if he certifie an 33-H.8.cap. Obligation taken for fecurity, that Certificate cannot make 39. it is the Bond to be a thing upon Record, and the party cannot clear that be bounden unto the King but by matter of Record, or Bond theil unless that he will come into the Court, and confess the same nor be tato be his Deed, and pray to have the fame enrolled. And it here feemeth

feemeth that the Law is such, because that by the Common Law the Sheriff is Conservator of the Peace, and hath the keeping and the custody of the County for the time that he is Sheriff; and the same appeareth by his Commission and Letters Patents which he hath, the words of whose

Patent are fuch:

Rex. &c. Commissimus vobis Custodiam, &c. and by that he takes his Authority, the which is a matter of Record, as the Commission which was made to them who shall be suffices of the Peace, the which Commission giveth them Authority to hear, determine and enquire of all those things which are done against the Peace: And by reason of that Commission they have power to bind men by Recognisance to keep the Peace, upon Complaint made unto them by any person: And yet there is not express Authority given them by the Committion to take that Recognifance, but it followeth, that because they have authority to cause men for to keep the Peace, and to hear and determine offences against the Peace, they have power to bind men by Recognitance fo to do; for every thing which they have done by virtue of their Committion ought to be taken as a matter of Record. And by the same reason the Sheriff, because that his Patent is of Record, and he is Conservator of the Peace in every place, every Obligation which he taketh for to keep the Peace shall be in Law taken for a Recognisance. and especially when it is certified in the Chancery by Gartiorari: But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by Writ of Justicies are not taken as matters of Record; for these Pleas are holden before him by reason of the Courts which he hath by reason of his Office, as the County and Hundred Court, &c. But the Leets and Torns which are for the Commonwealth, as for keeping of the Peace, these are Courts of Record, and by consequence for keeping of the Peace the Sheriff is Judge of Record, and may take Recognitance for the keeping of the Peace ex afficio; but if he fo do, and take Recognisance upon a Writ of Supplicavit, or other Writ directed unto him to take Sureties for keeping of the Peace, it is the stronger; but give credit to better reason, and therefore quere thereof.

[827 Vide 7 H.4. 34.36. Crompton 325.

## Writ de Auxilio ad Filium suum Militem faciend, vel ad Filiam Maritand.

A THe form of the Writ is fuch :

Rex Vic',&c. Precipimus tibi, quod juste, &c. sac. habere A rationabile Auxilium de Militibus & liberis Tenentibus suis in Balliva tua, ad primogenit. sil. suum Milit, faciend', vel ad primogenit. siliam suam maritand', juxta formam Statuti de communi consilio regni nosiri Augl. inde provisi. Teste,&c.

And a man shall not have this Writ before that his Son hath accomplished the age of fifteen years, nor for to marry his Daughter before she be of the age of seven years, as

appeareth by the Statute of west. 1. cap. 35.

And he who holdeth his Lands by a Knights-fee shall pay 20 s. unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly value of 20 l. holden in Socage, he shall pay 20 s. unto the Lord to make his Son Knight, or for to marry his Daughter.

And he who holderh by half a Knights fee shall pay 10 s, and he who holdeth Lands in Socage of the value of ten pounds by the year shall pay 10 s. And so according unto the rate of the value of the Socage-Land, and according unto the quantity of a Knights fee, he shall pay his Aid, and that by the Statute before-mentioned.

But this Aid, to make the Son a Knight, or to marry his Daughter, the Lord was to have by the Common Law of D his Tenants, and the Statute puts it only in certainty. And the Lord may diftrain his Tenant for this Aid, and avow for the fame if he will; and he need not for to fue this Writ unless he will. And this Writ is directed unto the Sheriff, and he may have an Alias, and a Pluries, and an Attachment against the Sheriff, if he will not assist the Lord to distrain his Tenants for this Aid.

And the King's Tenant in like manner shall pay Aid unto the King to make his eldest Son a Knight, or for to marry his eldest Daughter, &c. viz. every one who holdest by a Knights see 20s. and he who holdest by half a Knights see 10s. and so according to that rate.

And in like manner every one who holdeth of the King in Socage 20 J. Land shall pay 20s. to make his eldest Son Knight, or for to marry his eldest Daughter. And he who holdeth 10 J. Land in Socage shall pay 10 s. and that is ap-

4 pointed

pointed by the Statute de Provisionibus, An. 25 E. 3. sap. 10. And the Statute setteth the Aid certain, because that before the said Statute the King would distrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointed that the King shall have no more.

And if the eldest Son dieth before he cometh to the age G of fifteen years, or before the Lord hath levied the Aid to make him Knight, then the Lord shall have Aid for the younger Son, to make him Knight when he cometh to such age, and yet he is not primogenitus filius, as the Writ doth suppose, but he is the primogenitus which is then alive, and that is sufficient, for he ought for to be Heir apparent. And so is it if the eldest Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldest which is then living, after she is of the age of seven years.

And by the Statute the Writ which shall be directed unto H the Sheriff to levy such Aid for the Lord, shall mention that the Son is of the age of sifteen years; and if it be for the Daughter, it shall mention she is of the age of seven years, otherwise the Writ is not good. But that form is not in the Register, for it seemeth the Register was made before the Statute of west. I and therefore the Writ ought to be accord-

ing as the Statute ordaineth it.

And if the Lord doth levy Aid for the Marriage of his B Daughter, and afterwards marrieth her, then the Daughter shall not have an Action of Debt against the Fathers Executors for the money levied, &c. But if the Daughter be not married in the life-time of the Father, &c. by him, then the Action doth lie. And so it seemeth, that if the Son be no made Knight in the life time of the Father, that he shall have an Action against the Fathers Executors for the money le-

vied to make him Knight.

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See after

# Writ de Scutagio habendo.

His Writ for Escuage lieth in case where a man holdeth Vide Line. Lands of the King by Knights Service, to which Ho- 19, and 200 mage, Fealty and Escuage is appendant; and he who holdeth of any Lord by fuch Service, who holdeth over of the King by the like Services, when the King maketh a Voiage-Royal in War against the Scots or against the wellh in proper person, or by his Lieutenant, then he who holdeth by Knights Service ought to go in person, or find a man to go for him, in the War with the King, or his Deputy in that War, for forty days, at his own costs: and if he do not go, nor find a man fo to do for him, then he shall pay for that default, and not doing of his Service, such fum of money as shall be assessed by Parliament; for a Knights see so much, and for half a Knights see so much, and Dyer 329. fo according to that rate. And then he who holdeth by a that he who whole Knights fee shall pay so much for Escuage as the Par-holdeth by liament doth affefs that a whole Knights fee shall pay, if he the moity of hith not done the Service; and he who holdeth by half a a Knights Knights fee shall pay according to the rate; and those who fee, holdeth have done their Services, and gone in the War, shall not pay by Knights Service, and any thing. And that fum of money is called Escuage, Servitium foir shall be Scuti.

intended, if

And if a man holderh of the King by Knights Service, and it be not to go with him in his War, &c. then that Lord shall have found to the Escuage of his Tenants who hold of him by the like Service; contrary. but the fum which he shall have and levy ought to be assessed by Parliament (as afore is faid) before he distrain for the fame.

And if a man hold of any Lord, to guard his Castle in time of War, or to blow a Horn in the time of Invasion of Enemies, the same is Knights Service: but it seemeth that for those Lands they shall not pay Escuage, if they do not their Services, but the Lord shall distrain them for not doing their Service, and shall have recompense for the same. So that none shall pay Escuage but only those who hold by such Services, to go into the War, or to find a man to go, &c. tamen Quere.

And if he who holdeth of the King by Knights Service to go with the King in War, do his Service, &c. then he shall have a Writ for him, directed unto the Sheriff, to have Escuage of those who hold of him by the like Service. And the form of the Writ shall be such :

D

Rex Vic',&c. quia dilectus & fidelis nofter W D habuit fervic. suum nobiscum per præcept.nostrumin Exercit' nostro Scotiæ an. regni nostri primo; or thus, fuit nobisc. per præcept. nostrum in Exercit',&c. an',&c ficut per Rotulos A, Constabularii nofiri Exercitus noftri prad', nobis constat ; or thus, fecit finem nobisc.pro servic' suo in Exercitu nostro Scotia, an', &c. sicut per Certificat' Thefaurarii & Baron.nostror. de Scaccario in Cancellar' nostra de mandato nostro missam nobis constat : Tibi præcipimus, quod eidem W D habere fac. Scutagium summ de Feodis milit.que de ipfo tunc tenebant in Ball.tua, viz. octo folid. de Scuto pro Exercitu pradict: & hoc nullatenus omittas. Tefte, &c.

And by that it appeareth, that if the King's Tenant goeth G with the Hing's Lieutenant or his Deputy in War, that the Constable of the Host ought to certifie the same into the Chancery, before the King's Tenant shall have a Writ to levy the Escuage of his Tenants; and if the King's Tenant do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Elcuage of his Tenants.

And by that it appeareth, that if the King's Tenant do H not go in the voiage, nor agree with the King for that voiage, that then he shall not have Escuage of the Tenants, nor distrain the Tenants for the same.

And if a man holdeth of the King by Socage, and others I hold of him by Knights Service, and the King maketh a vokage in War into Scotland or wales; now it seemeth he shall not have Escuage of his Tenants, if he goeth not with the King in the voiage: but if he goeth with the King or his Deputy, or agree with the King for that voiage, then it feemeth he shall have Escuage of his Tenants, and shall have the aforesaid Writ. And it is not material whether he hold by Knights Service, or in Socage.

And if there be Lord, Mein, and Tenant, and each holdeth K of the other by Knights Service, if the Tenant go into Scotland by the King's common Summons, then the Mefn shall

not pay Escuage: quod conceditur per Cur. Trin. 5 H. 5. And if a man holdeth Lands by fuch Service, that he shall A pay a Penny, or a pair of Spurs, when Escuage runneth, &c. the same shall not properly be Escuage, as it appeareth in 15. E. 2. Title Avowry in the Abridgments.

Vid. Title Avorory, 215.

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And vid.19 R. 2. that Garder of a Caftle doth countervail B Escuage, so as his Heir shall be therefore in Ward, and so of grand Serjeanty; and yet it seemeth they thall not pay Elcuage, Qual vid. in Title Gard.

See before 83 E.

## Writ de Scutagio babendo.

C And in Title Quare impedit, in the Abridgments, that Escuage certain doth not make Knights Service, Hil.s.3.

And if there be Lord, and many feveral Mesnes and Tenants, and each holdeth by several Knights Service, if the Tenant paravail of the Land doth the Services, and goeth with the King in War, &c the same shall excuse all the other Mesness for one Land but one Service can be demanded, viz to go, or to find a man to go, &c. and so the Mesne paramount here is excused, because that the Service is done by the Tenant, &c.

E And when the King will levy Escuage of his Tenants, he useth to grant a Commission to certain persons. And the

form of the Commission is such;

Ker dilectis,&c. Alignavim.vos ad Scutag.nostr.de Exercitu nostro Scotia, anxig.nostri primo levand. & colligend. in collig n'in con. K, tam infra Libertat, quam extra, de Feodis Milit.que tuna tenebant.de nobis in capite, sive de Escaetis & Honoribin manu nostro tune exist', sive de perquisito progenitor. . nostror', aut rotri, quam de Feodis Milit' que tenent' de Archi-pijcop rib', Fpi (copatib', Abbat', Prioratib'. & aliis Dignitatib. vel Offi . Ecclefiaft. quibuscunque, que tunc in manu nostra fuer', ac de hereditat. Hæredum infra ætat. & in cuftod. noftra existen', viz. xl. solid. de quolib' Feodo pro Exercitu suprad'; ità quod omnes denarios indè provenient. habeatis ad Scaccar. nostr' particulat. ad citius quod poteritis nobis ibid. solvend'. Et quia quamplura de Frod.præd.ad manus diversor. devener', tam temporib. progenitor.nostror. quam nostro, quadam viz. per descensum hareditar, tam in partes quam alio modo, & quadam per alienac' inde diversimode factas Assignam. vos ad inquirend' per sacrament.probor. & legal. homin.de quolib. Hundredo in Com' præd. tam Milit' cinctor. gladio, quam alior', per quos rei veritas melius sciri poterit, qui tenuer. Feoda militaria tempore prad' in eod. Com', aut aliquam partem Feodor eorund', ut de Corona nostra Anglia, vel de perquisito progenitor nostror. & nefro, & de Archief', Episcopat', Abbat', Prioratib', & aliis Dignitatib. & Officiis antedistis, ac etian de hereditatib.Hared. prædstunc infra ætatem existen. & quot Feod. & quantas partes Fendi quilib. Tenens. bujufm.tunc tenuit, & in quibus Vill. distincte, or qui fuer' antecessores illor. qui tenent per descensum bereditar. & qui alio modo, ac etiam qui Hæredes fuer infra ætatem, o in cuftod noftra, o qui Archiepiscopat', Episc. Abbat. & Priorat. & all e Dignitat. quecunque vel Officia tempor. illo vacabant, temporal. quor.cuftod. ad nos pertinet, Et ideo vobis in fide qua nobis tenemini firmiter injungendo mandam quind ad certos dies,&c. pramif. faciat. & expleatis in forma prad. & Inquisi-

Inquisition. saper pramis. distincte & aperte factas, que de fingulis Feodis, to de nominib & cognominib.ea fingulat. quond' tenentium dum integr.tenebantur, & eor. qui postmod.ea succe live tenuer' post partitiones eor' int. bæred' participes, vel per alienationes, ut prad. eft, apertam faciant mentionem, habeat. adScaccar.præd' circa fest. Pasc.proxim.futur' sub sigillis vestris & sigillis cor.,&c. fact.fuer'. Mandam.etiam Vic.noftro Com' prad', quod ad certum, &c. venire fac' tot & tales prob. & legal. homines tam Milio gladio cinctos quam alios de Balliv. sua, tum infra Libertat. quam extra, per quos rei veritas melius sciri poterit & inquiri, or quod vobis in pramif. pariat or intendat. Mandam. stiam Thefaurario & Baronibus nostris de Scacear.præd', quod bujufm. Feod' ad Scaccar.præd' reperta, Terras & Tenement. in Com' præd' tangentia, vobis celeriter in scriptis mittant in evidentium, & pro majore expeditione præmissorum. In cujus,&c. Tefte,&c.

And a Venire facias shall be sent unto the Sheriff close upon this Commission, and another VVrit close unto the Treasurer and Barons, &c. quod Feoda mittant, &c.

And now it appeareth by this Commission, that the King F shall have Eschage of the Tenants who hold of these Lands or Mannors which the King hath in his hands by reason of VVard, or by reason of the Vacancy of a Bishoprick, &c. Or if he have an Estate for years in the Seigniory, he shall have Escuage of the Tenants,&c.

\*And fo shall another Lord have, if he have a term for years or for life in the Seigniory, if he go in voyage with the age, because King in VVar into Scotland. &c. he shall have Escuage then of the Tenants which hold of him by Knights Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a man for to defend him; and then if the Lord do not go into the VVar, the Tenant is excused.

> Writ de Securitate inveniend, quod se non divertat ad partes exteras, fine Licentia Regis.

DY the Common Law every man may go out of the Realm A B to Merchandize, or on Pilgrimage, or for other cause he pleafeth, without the King's leave; and he shall not be punished for so doing: but because every man is of right for to defend the King and his Realm, therefore the King at his pleasure by his VVrit may command a man that he go not beyond the Seas, or out of the Realm, without License; and if he do the contrary, he shall be punished for disobeying the King's Command. And it seemeth that this Command

\* 19 E.2. Br. Tenures 68. Leffee for life may do Escuage. 6 E.2. Gard. 12.he fhall the Ward, because it

is a Profit; he shall have Efcuit is a Suit real, by Wilbie.

Scrope cont.

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Vid. r Eliz. Dyer 165.

may be made by the King's VVrit under the Great Seal, and also under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take notice of every of the King's Seals in such case, as well as of the Great Seal,

And there are two manners or forms of such VVrits; one is directed unto the party, and the other unto the Sheriff, commanding him that he cause the party to find security that he shall not go out of the Realm without the King's

License. And the first Writ is such:

Rex I de B salutem. Quia datum est nobis intelligi, quod tu versus partes exteras absque Licentia nostra clam destinas te diverter, & quamplura nobis & Corone nostre prejudicialia ibidem prosequi intendis, in nostri contemptum & prejudicium, ac contra proclamationes & inhibitiones nostras inde sepius fattas: Nos, bujusmod i contemptui & prejudicio obviare volentes, tibi districte sub periculo quod incumbit prohibemus, ne versus partes exteras absque licentia nostra speciali aliqualiter te divertas, nec quicquam ibidem prosequi attemptes, seu attemptaris sac, quod in nostrum seu ditte corone nostre prejudic cedere valeat quovis modo, nec aliquem ibidem mittas ex hac causa. Teste. & c.

And also the King by his Proclamation may inhibit his 12 & 13 E. Subjects, that they go not beyond the Seas, or out of the liz. Dyer Realm, without License, and that without sending any VVrit 296. 26. or Commandment unto his Subject; for perhaps he cannot find his subject, or know where he is, and therefore the King's Proclamation is sufficient in it self. And if the subject do contrary thereunto, it is a contempt, and for so do-

ing he shall be fined to the King.

The other form of VVrit directed unto the Sheriff is fuch:

Rex Vic', &c. Quia datum est nobis intelligi, quod A B, Clericus, versus partes exteras, ad quamplura nobis & quampluribus de populo nostro præjudicialia & dampnosa ibid prosequend', transire proponit: Nos, malitiæ suæ resist. volentes in hac parte, tibi præcipimus, sirmit. injungentes, quod præd. A B coram te corporalit. venire fac', & ipsum ad sufficientes Manucaptores inveniend', qui eum manucapere voluerint, sub certa pæna eis per te rationabilit. imponend', pro qua nobis respond, volueris; Or thus, & ipsum A B ad sufficient. securitatem inveniend', sub pæna centum librar' ad opus nostr, solvend', vel quilibet eor. sub pæna, &c. quod ipse versus aliquas sartes exteras sine licentia nostra speciali se non divertat, nec quodcunque ibid prosequatur aut prosequi vel attemptari façere præsumet, quod in nostri contingt' vel præsudic' aut populi nostri dampn. cedere valeat, nac aliques.

uliquem aut aliquosibid' mittet ex hac causa, quovismodo compellas. Et si hoc coram te sac. recusaverit, tunc ipsum A B prox' gaol-nostra committas, in ead' salvo custodiend', quousque hoc gratis sac' voluerit. Et cum Securitat.il.ssc ceperis, nos indein Cancellar. nostra sub sigillo tuo distincté & aperté sine dilatione redd. certiores, vel certisces indilaté, hoc Breve nobis remittens. Teste, &c.

And this Writ may be directed unto Justices of the Peace, E or unto the Sheriff, or unto both; and the form may be as the Writ of Supplicavit, which is directed unto the Justices of the Peace and unto the Sheriff, to cause him to

find Sureties,&c.

And every one upon a Surmise made unto the Chancellor F may sue forth this Writ for the King; and then the party against whom it is sued may come into the Chancery, and obtain License by Letters Patents, or by Letters under the Privy Seal or Privy Signet: and the Licenses are good although they be not under the Great Seal, because those Letters will excuse his contempt. And such Licenses are called Passports. And now by the Statute of 5 R.2 c.2 it is ordained, That no person pass out of the Realm without the Rings leave but those who are excepted in the Statute, and therefore see the Statute.

### Writ of Trespals.

There are two manners of Writs of Trespass. One is of a Trespass which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but shall be determined in the County before the Sheriff; and in this Writ he shall not say Quare vi & armis, &c. but the form of the Writ is such:

Rex Vic' Linc. salut. Questus est nobis A de B, quod C in ipsum A apud N insultum secit, & ipsum verberavit, vulneravit, & male tractavit, & alia enormia ei intulit, ad damnum ipsus A non modicum & gravamen, & ideo tibi pracipimus, quod Loquel. illam audias, & postea inde juste deduci sacias, ne amplius clamorem inde audiamus pro desectu iusitia. Ieste, & c.

And by this Writ the Sheriff shall hear and determine that Trespals, &c. by Inquest according to the Common Law; and this Writ is in effect a Commission unto him, and he may declare upon this VVrit unto his damage of 20 l or more.

And another form of VVrit for Goods is such:
Rex Vic',&c. Questi sunt nobis A & B, Executores Testamenti

C,ad

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C, quod E & F bona & catalla que fuer. ipsius C, ad valene, &c sub custodia ipsor. Executor apud N inventa, ceper. & asportaver, & alia enormia eis intuler, in retardac. Execut. Testamenti præd, Et ideo, &c. nè amplius, &c.

B And a man may fue other Writs of Trefpass upon the Case in the County before the Sheriff; and the forms of the

Writs are fuch:

Rex Vic, &c. Questus est nobis A, quod chim B centumoves suas præd. A, super terr & pastur' suam apud N per unum annum moratur.vel custodiend', sub certis conditionibus liberaret, præd' B oves illas ibid. super terram ipsius A existentes sinclicentia & voluntate ejust. A insia termin. præd' cepit & abduxit, & alia, &c. ad dampnum, &c. By which Writ it appeareth, that he cannot take back the Cattel again, if the Plaintiss personn the Conditions.

If a man borrow a certain furn of Money, and doth pawn Goods for the fame, and he offereth the Money again unto the party, and prayeth that the Pawn may be delivered back to him, and the other refuse to do it: he shall have an Action of Trespass upon the Case in the County

before the Sheriff, to determine the matter,&c.

O If a man doth deliver unto another a Bull, or Oxen, or Cows, to make his benefit of them for a certain time upon condition; if he againft the will of him to whom they were delivered take them back again within the time, he shall have an Action of Trespass againft him, directed unto the Sheriff, to determine that Cause.

If a man do diffrain Kine which are with Calf, and impound themagainft Law for fo long time that they caft their Calves, then he shall have a special Writ directed unto the Sheriff, rehearing the special matter, to end the same

before the Sheriff in the County.

F And so if a man have a Salt-pit by the Sea-coasts, and another erectetha Wall betwire the Sea and the Salt-pit, if the other person throws down the Wall, for which the Seawater over-sloweth the salt-pit, he shall have a special Writt directed unto the Sheriff, to end the matter in the County.

G And so for every manner of Trespass done, a man may chuse to have such a Writ directed unto the Sherist, to end the matter before him in the County, or to sue a Writ unto the Sherist, returnable in the Common Pleas or the Kings Bench.

And if the Writ of Trespass be returnable, then the Writ shall be of another form, for then these words Vi & armis shall be in the Writ; and if it want those words, the Writ

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Thall abate, if they be not Writs of Trespass upon the Case; which Writs of Trespass shall not have these words Quare vi & armis in the Writ, although they are returnable in the Common Pleas or Kings Bench; and if they have the words Quare vi & armis in the Writs, it shall be good cause to abate the Writs. And the form of a Writ of

returnable in the Kings Bench is fuch:

Rex Vic', &c. Si A fecerit, &c. tunc pone per vad. & falvos plez' I B, quod fit coram nobis in Octavis S. Mich', ubicunque fuerimus tunc in Angl'. And if it be returnable in the Common Pleas, then thus: Coram Juftic' nostris apud Westm. in Octavis S. Mich'. ostens, quare vi & armis in ipsum A apud Ninsult' fecit, & ipsum verberavit, vulneravit, & male tractivit, ità quod de vita ejus desperabatur, & alia enormia et intulit, ad grave dampnum tissus A, & contra pacem nostram. Et babeas ibi nomina pleg', & bocBreve. Teste, &c.

And if a man do imprison another, then the form of the K Writ of Trespass is: Often Juare vi & armis in ipsum A apud N insultificit, & ipsum vulneravit, imprisonavit, & male

tractavit, & alia,&c.

And it is not material whether he be wounded or not, for the form of the Writ is such: but the Damages shall be increased for the same, if he do recover. And if he do imprison him until he pay a Fine for his deliverance, then the form is; Quare vi & armis ipsum A apud N cepit, imprifonavit, & male tractavit, & ipsum in prisona ibid, quousque Finem per tantum pro deliberatione sua babend cum prass. B jectiset, detinuit, & alia enormia ei intulit, &c.

3 H.4.13. 7 E.6.Dy.70 20 E.3.38. per Thorpe.

And a man may have one Writ of Trespass for divers L Trespasses, as for breaking of his Close, cutting of his Trees, sishing in his Ponds, beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks, and the form of the Writ is: Quare vi & armis boscum ipsius A apud N intravit, & trespullus Espervorum suorum, pretitanti, nuper in eod. bosco nidificantium cept & asportavit, & alia enormia, & c.

And by this Writ it appeareth that the property of the Hawks are in him who hath the Land, by the word [fuorum]

in the Writ.

And for hunting in a Warren the form is; Liare, &c. War-M
renamipfius A apud N intravit, & in ea fine licentia & voluntate fua fugavit, & Lepores, Cuniculos, Phafianos, & Perdices
cepit & aportavit, &c.

And

A And if a man hunt and take another mans Conies in his 43 E.3.13. Close which is no Warren, then the form of the Writ is: Quare,&c.clausum ipsius A apud N fregit, et in eo sine licentia et voluntate, &c. fug, et tot Cunicul. pretii tanti cepit & asportavit.&c.

And by this Writ it appeareth that he who hath the Land hath no property in the Conies. And so of a Park: H.6.55.ac. Quare,&c. Parcum ipsius A apud N fregit, et in eo, &c. fugavit, et ser as cepit et asportavit; Or thus, Quare,&c. Herbam ipsius A apud N nuper crescentia, ad valentiam decem librar, cum quibusdam Averiis depastus fuit, conculcavit, et consumpsit, et alia, &c. And he need not say in the Writ, Quare, &c. Clausum fregit, &c. et Herbam,&c.

B And there is another form of Writ of Trespass, De solo C sosso et carbonib. maritimis asportatis. And another form of Writ in the Register, De equo et catall. arrestatis sine causa, quousque Finem jecevit.

D And another form, De domo fracta et maremio asportat.

E And the Writ of Trespass for Executors for Goods ta-

ken out of their possession, which is such:

Rex,&c. Si A et B, Executores Testamenti C, secerint, &c. tunc pone, &c. quare quatuor Boves, qui suer. ipsius C pretii centum solid', sub custodia ipsorum Execut. apud N inventos cepit et abduxit, et Blada que suer. præd' C ibid. crescentia messuit, et Blada ac alia bona et catallage suer ejusd. C sub custodia eorund. Executor ib inventa cepit et asportavit, et alia enormia eis intulitin retardationem executionis Testament.præd. & cont. pacem nostram.

F And if an Abbot and his Monks break the Seal of any Writing which they have made unto another person, the party shall have a Writ of Trespass against them, in such form:

Rex,&c. Si A fecerit,&c. tunc pone Abbatem de C, et I et D Commonachos ejufd Abbatis,&c. quare,&c. quoddam Scriptum ipfus A, communi Sigill' præd. Domás fignat', per quod idem Abbas et Conventus ejufd. loci tenebant.præf. A in victu et vestitu et omnibus necessaris suis sibi inveniend', quousquidem Abbas et Conventus eandē A alicui viro viginti libratas terræ vel redd. babenti maritaver', apud L invene.malic' freger'; et alia,&c.

And also a man may have a Writ of Trespassfor fishing in his several Piscary, and for cutting of his grass, & for plowing of his Land, or for shearing of his Sheep, & all in one VVrit.

And another form of VVrit for mowing of his Corn, and cutting of his Grass, and felling of his VVoods, and eating of his Corn and Pastures, and all in one VVrit.

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And also another Writ of Trespass made unto a Woman H

before Coverture, which is fuch:

Si A & B uxor ejus fecerint, &c. tunc pone, &c. quare, &c. quaddam Forcerium ipsius B apud N invent. fregit, & quoddam Script. obligatorium in eodem Forcerio inventum cepit & asportavit, &c. & alia, &c. ad grave damnum ipsor. A & B, & contra pacemnostram.

And another Writ in the Register, De Navi abducta, & I

catall. afbortat'.

And another Writ, De Bladis & graminibus vinearum de- K past', &c. And another Writ, De Bladis & graminibus bosci

cadui depaftis,&c.

And another Writ, De Stagno fracto, thus: Quare, &c. L quodda Stagnum apud R malitiofe fregit, per quod aqua ab eod. Stagno decurrens Vivarin ipfius A ibid. in tantum inundavit, quod per cursum aquæ illius & inundation præd. piscis in eod. Vivar. tunc existens ad valenc' cent.marc.exivit; alia, &c.

By which it appeareth, that he shall have a Writ of Trespass vi & armis, because he causeth the water to run out

of his Pond, by which the Fish there go away.

And there is another Writ De Equis abduttis, and goods M and Chattels unto the value of 5 l. and 100 s. of his Mony

in mony told, ibidem invent' cepit,&c.

And there is another Writ of Trespass against those who N lie near the Plaintiffs house, and will not suffer his servants to go into the house, nor the servants who are in the house to come out thereof; and for taking and impounding his Cattel, and not suffering him for to sue a Replevin, &c. And the form of the Writ is such:

Rex,&c. Si, &c. pone, &c. quarevi& armis Mansion. ipsius A apud H obseder, & homines & servientes suos extra Mansion. pradictam existentes, eandem Mansionm ad servic. & commodum ipsius A inibi faciend. ingredi, ac quosd. alios homines & servient. suos inibi existentes, Mansion. pradictam ad terram ejustem A ibidem excolend exire, non permiser, per quod cent. acr. terra ipsius A inculta remanser, & idem A prosic. terra sua pradicta ad valentiam viginti librarum, & servic. suum eorundem hominum & servient. per magnum tempus amist; necnon Averia ipsius A ibidem imparcaver, & ea ibidem imparcata detinuerunt, non permittentes ea eidem A secundum Legem & consuctudinem Regni nostri replegiari; & alia enormia ei intustiviut. &c.

And there is another Writ of an House broke, and Priso- A ner taken away, thus:

Quare vi & armis domum ipsius A apud N, in qua idem A quend.

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quend. H de C, Scotum, per ipsum in guerr. capt', tanquam preforar. suum, quonsque sibi de centum libres, per quas idem H redemptionem suam cum præfato A pro vita sua salvand. secerat, satisfactum soret, detinuit, freger', & ipsum H ceper. & abduxer', & alia enormia, &c.

B And note that the form of the Writ for a live thing, as 2 & 3 P.& Horses, or Men, or such like, is to say, ceperunt & abduxerunt; Ma. Dyer and for a dead thing, to say, ceperunt & asportaver, &c.

And there is another Writ of Trespass; If a man take another, and imprison him until he make Oath that he will not trouble or imprison him for a Trespass done to him before, or imprison him until he hath made unto him a Release of all Actions.

And if a man taketh his Villain and puts him in the Stocks, and others come and break the Stocks, and let him ont, he shall have an Action of Trespass, and the Form is:

Quare chm idem R,S, nativum & fugitivum suum, in Manerio suo apud K, pro eo quod idem R non suit justificabilis, cepissit, & ipsum ibidem in cippis ad castigand, prout sibi bene licuit, posuisset, prædict, &c. præd. cippos vi & armis sreger, & ipsum S ceper. & abduxer, &c.

E There is another form of Writ, thus: Quare vi & armis, &c. quodd. Fossatum in L terris et simis in tantum implevit, quod aqua de Fossato prædicë exiens Blad.ipsus W in garbis in horreo sino ibidem existent. superundavit, per quod Blada prædad valentiam C s. putrefacta suer', et Arbor. suas ibid.nuper crescen. ad valentiam xl s. radicitus evulser. et asportaver', et Blada sua ibidem nuper crescen. ad valenc. xl s. cum quibusdam Averiis suis depasti suer', conculcaver. et consumpler', &c.

And by the first of these Writsappeareth, that that is an Action of Trespassupon the Case, and the residue a common Action of Trespass.

F And if a man draw Wine out of the Vessels, and put Water in the same to fill them up again, he shall have an Action of Trespass in this form:

Quare vi et armis, &c. xl. lagenas de quodam dolio Vini ipfius A, pretii quatuw libr', in navi pradicti I apud S pofit, abinde ujque S ducend', extraxit, et dolium illud aqua maritima adimplevit, ita quod residuum Vini prad. putridum devenit, et totalit. deperiit; et alia,&c.

And another Writ of the Fish of his Piscary, and Herb fed up, and Land digged, thus:

Quare vi,&c.in libera Pifcar ipfius A apud N pifcatus fuit,et Herbam fuamibid.nuper crefcen falcavit,et in terra fua fimiliter ibid. fodit, et terram indè projecti, ac Herbam prædict. et S 2 C. J. part

fendant as

guilty to a-

ed damages

Dyer 121.

the Jury found one if-

Piscem de Piscariis pradict. ad valentiam Cs. ceper', &c. And it appeareth here that there are divers manners of H forms of Fishing in his Fish-pool. One Writ is, Quare, &c.in Vivariis suis piscatus fuit, &c. Another Writ is, Quare, &c.in separ. Piscar. ipsius A piscatus fuit, &c. And the third Writ is as before, Quare in libera Piscar ipfins A apud N pisc. fuit,&c.

And a man shall have a Writ of Trespass for breaking of T his House, and cutting of his Trees, and for fishing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plough-Cattel, and impounding of them, and for taking of his Doves out of his Dove-house; and the form is fuch:

Quare, &c. Domos ipsius A apud N fregit, et Arbores suas ibid. nuper crescen. succidit, et in Vivariis suis ibid. piscatus fuit, et Pifc. inde ac Arbores prædict', necnon alia bona et Catal. sua, ad valentiam Cs. ibidem inventa cepit et asportavit, et Averia sua de caruca sua ibid. cepit et imparcavit, et ea tamdiuimparcata detinuit, quod quadraginta acr. terræ ejufd. A per magnum tempus incultæ remanser, et Columbas columbar. sui ibidem cum retibus et aliis ingeniis cepit et asportavit, per quod idem A volatum Columbar. Sui præd. totaliter amisit;et alia,&c.

And by this Writ appeareth that a man shall have an A. ros.in Tref- ation of Trefpals for taking of his Plough-Cattel, and fhall pass the De- joyn the same in a common Action of Trespass with other Trespasses; and also that he shall have an Action for taking to one thing of his Doves,&c.

justified, and pleaded not

And a man may have a Writ de Clauso fracto, et Bladis in K garbis et Fan. ad valenc. Cs. de pastis, &c. Or of eating of nother; and his Hay only, &c. Or, quare Arundinem ipfius R ad valenc. C s. apud N nuper crescen. me Juit et asportavit.

Another, Quare, &c. Lapidem molarem ipsius Prioris pretii L

fue, and tax- xl s. apud N fregit; et bona et catalla, &c.

And by this it appeareth, that if it be a live thing or M entirely. 22 dead thing for which the Action is brought, it is not material El. Dy.369. whether he say pretii,&c. or ad valentiam,&c.

2 & 3 Ma. And another Writ of a Mill-Pool broken in two Towns,

17 E.3.4c. thus:

Quare, &c. Stagnum molendini ipsius R de B apud R et S fregit, per quod aqua de codem Stagno totaliter exivit, et idem R proficuum molendini sui præd. ad valenc. C s. amisit; et bona et catalla fua.&c.

And another Writ, De Domibus et catallis combustis. And another Writ, De Ovibus tonfis et Lanis afportatis.

And another for taking him and imprisoning him in one P place, and from thence carrying of him to prison in another place, and there detaining him in Prison.

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And another Writ for taking of his Sheep in one place, and impounding of them in another place, until he hath paid a Fine.

And another Writ for breaking of his Sluces, in such man-

ner:

Quare,&c. Exclusum stagni molendin. ipsius Abbatis et Parcum suum ibid. apud S freger', et in eo sine licentia,&c. et Arbor. suas,&c. & in separali Piscaria,&c. et Piscem indè, et Arbor. præd. ad valenc. Cs. necnon Feras de præd. parco ceper.

Another Writ, Quare vi et armis,&c. Exclus. ipsius A ultr. fossatum de N, pro salvatione terrarum suară apud C,&c. vi et armis fregit, et maremium ind.ad valenc. C s. în minutas partes secuit, it à quod per fracturam bujumodi, terra et prata ejusd. Albideminundat. suer, et d. A proficum terraru et pratoru pradad valenc. C s. totalit amisit; et alia,&c.

And another Writ: If a man doth imprison his Villain, and set him in the Stocks for some offence, and another man doth set him at large, the Lord shall have an Action of Trespassfor breaking up the Stocks, and for setting his Vil-

lain at large.

And another Writ: If a man be riding on the way, and another man striketh his Horse, by which the Rider falleth and is hurt; he which is cast off his Horse shall have Trespass against the other.

See 91.k.

And another Writ for putting out another mans eye thus: Quare vi & armis dextr. ocul. ipsius W apud N eruit,

& alia, &c.

And the Master of an Hospital shall have an Action of Trespass for taking of goods in the time of his Predecessor. And the form of the Writ is such; Rex,&c. siW de N,Custos Hospitalis sancti Michael.de C, secerit,&c. tunc pone,&c.quare vi & armis bona & catall.pradist Hospitalis,ad val. C s.tempore I de C, super Custodis Hospital.prad, pradecessors pradist. Custod', apud R inventa cepit et asportavit, &c. & alia,&c.

And the like Writ for an Abbot or Prior, and in the end of the Writ he shall say, in deterioration. Domn's & Ecclesia ipsius Abbatis; and so it seemeth it shall be in the end of the

Writ for an Hospital.

H And another Writ for an Abbot thus: Quare vi & armis portas & domos Dom. & Eccles. ipsius Abbat. apud L fregit, et Blada Dom. & Eccles. præd. tempore præd. Abbatis ibidem crescer, ad val, &c. cum quibusd. Averiis depastus suit, conculcavit & consumpsit, & bona & catalla earund. Domus & Ecclese tempore prædict. ad val. C s. ibidem inventa cepit, &c. & alia, &c.

And

And another Writfor a Trespass done in the time of Va-I cation of an Abby or Hospital; Quare vi & armis bona & catall. Domus & Ecclesia ipsius Abbatis de C tempore Vacationis Abbat, predict ad val. C s. apud L inventa cepit & asportavit, &c. & alia, &c in deteriorationem, &c. & cont. pacem, &c.

And another Writ of Trespass, Quare vi & armis war-K rennam ipsius A apud C intravit, & in ea,&c. sugavit; & Boscam suum similit.ibidem intravit, & tres pullos suos Espervorum in eod. bosco nuper nidissic. pretii XXS. ac alia bona et catall. sua ad val. C s. ibidem inventa, necnon lepores, cuniculos &

perdices in Warrenna cepit,&c.

And another Writ of Trespass, Quarevi & armis centum L Quesipsius A apud T invent' cum quibusd. canibus sugavit, canes illos ad mordend. Oves præd. in tantum incitando, quod per sugationem illam et morses canum præd' Oves pred. multiplicit deterioratæ suer', & magna pars ovium ill. sætus abortivos sæd; et in T servient. suum ibidem insult. secit,&c per quod,&c.

And another Writ, De Porcis fugatis, it à quid interier ut, &c.

And if a man do incite or procure his Dog to bite any man, he shall have an Action of Trespass for the same.

And if a man fill a Ditch with mud and earth, which had M used to be a Water-course, for which another mans Land is drowned, &c. he shall have a Writ of Trespass, Quare vi & armis, and the Writ issuch: Quare vi & armis quodd Fossatum apud T, per quod quadam aqua decurrit ib, terrâ et simo in tantum implevit, quod aqua illa de antiquo cursu suo impedita XX. acras terra ipsus A ibidem diversis Bladis seminatas inundavit, per quod idem A prosecum terra sua pred, totalit. amist. & alia enormia, &c.

And if a man distrain Cattel, and carrieth them into un- N known places, the party shall have an Action of Trespass Quare vi & armis, for the distraining of them; and the Writ

is fuch:

Quare vi & armis Averia ipsius A apud N cepit, et ea ad loca ignota sugavit, ità quad Averia ill. eidem A secundum Legem & consuet Regni nostri replegianda inveniri non potuer'; et alia, &c.

There are divers Writs of Trespass founded upon Sta- O

tutes, whereof some do follow.

Rex &C Si A,&C. tunc attach.B,&C quod sit coram nobis,&C. ad respond.pr.es. A, quare vi & arm. C uxor pr.es. A apud N rapuit, et eam cum bon. et catall.pres A, ad val C. mercarum, abduxit, et eam adhuc ei detinet; & alia,&C. ad grave damnum, &C. et contra formam Stat. in hujusmodi casu provisi, &C. 708e, &C.

Another

Another Writ: Quare vi & arm. Averia ipfius A apud N in Com. tuo cepit et ea a Com. illo ufque P in Com. Kanc. fugavit de imparcavit,et ea ibid. imparcata detinet, cont. Legem & confuet.

Regni noftri et cont. pacem noftram. Et habeas ibi,&c.

Another Writ of Trespais, that Diffreies, &c. be not out of the Fee, or in the King's Way thus: Si A fecerit, &c. tunc pone &c. quod fit,&c. coram, &c. oftenf. quare cum de communi Concil. regni nostr' provisum sit, quod non liceat alicui Districtiones facere ex quacunque causa extra Feod. suum, nec in via Regia aut communi strata, nisi de nobis & ministris nostris Becialem auctoritatem ad hoc habentibus, præd' B, qui minift. nofter non eft, ut dicitur, extra Feod. Suum apud N Averia ipfius A. contr.form. provisionis pred',&c. Et habeas, &c. Otherwise in the High-way thus: Averia seu bona et catalla ipsius A in Regia via cepit, et imparcavit, et ea adhuc imparcata detinet, contra Legem & conf. Regni noftri, &c. et cont. pac' noftram : Or thus; Et Averia pred' din imparcata detinuit contra Legem, &c. et contr. pacem nostr', &c. Et habeas, &c. Et Averia illa eid. A interim deliberari fac'. Tefte,&c.

Another Writ of Trespass against him who distraineth a man by his plough-Cattel, or by his Sheep: Often square cum ad communem utilitat. Regni nostri stat. sit, quod nullus de eodem Regn' distringat' per Averia carucar. suarum vel per Oves. pro debito nostro vel alieno, seu alia quacuna, occasione, per Ball. seu minist. nostros aut alior, quamdiu alia habeat Averia per que rationabilis Districtio super ipsum fieri possit pro debitis illis levand, exceptis duntaxat Averiis illis que in damno alicujus inventa secundum Legem et cons. Regni noftri imparcari contigerit; prad' W Oves prad' A apud N, vel Averia ipfius A de caruca fua apud N, cont. form' Stat' prædict', cepit @ imparcavit, et ea adbuc ibidem imparcata detinet, cont. Legem & conf.&c. et cont.pacem,&c. Et habeas,&c. et Averia illa

And so note that in this Writ of Trespass the Sheriff shall make deliverance unto the party, as he shall do upon a Replevin: And if the party hath the Beafts delivered unto him before the Writ fued, then this clause, Averia illa eidem

A interim deliberari facias, shall not be in the Writ.

eidem A interim deliberari fac'. Tefte,&c.

Another Writ: If a man doth take the Oxen or Carts of another or other things, as Barges or Ships, to carry goods, against the will of the owner, then he shall have such Writ: Rex Vic', &c. Si,&c. pone,&c.oftenf.quare cum in Stat.dudum apud Westm.edit.int.alia contineatur, quod nullus capiat equos, boves, plaustra, careitas, naves, et batellas ad cariagium fac', contra voluntat. illius cujus res ill' fuer'; præd. B & D vi et armis 90

quandam

12 H.4 16.

quandam carectam & quatuor equos prad. A apud N invent', contra voluntatem ipfius A, ad cariagium fac' ceper', & per magnum tempus detinuer'; & alia enormia, &c. ad grave damnum, &c. & contra formam Statuti predict, et contra pacem nostram. Et habeas ibi.&c.

Executors shall have such Writ of Trespass for goods and

chattels taken in the life of the Testator.

And if a man do distrain out of his Fee, he who is distrained shall have an Action of Trespass against him; and in the end of the Writ there shall be this clause, Averia illa eidem A interim deliberari facias, &c. And by that Writ the Sheriff shall deliver the Cattel to the party, as in a Replevin.

If a man cast any thing upon the seet of another, by which F he is hurt, he shall have an Action of Trespass for the same.

If a man taketh a Canon or Monk from out of the Mo-G naftery, the Abbot or Prior shall have an Action of Trespass

thereupon, thus:

Ostens. quare quand. domum infra Priorat. de B, quæ est cella ejusdem Abbatis, in qua Frater I, Canonic ejusdem Abbatis, pro delicio in quod contra Regulam Ordinis sui incedit, existit, juxta disti Ordinis regulam castigand, vi & armis fregit, et præs. I cepit & abduxit; & alia, &c. Or thus; Quare, &c. Clausum ipsus Abbatis apud L fregit, et stravem W de L, Canonicum, &c. in carcerali custodia instra Clausum prædist. juxta Regul, Ordinis sui castigand. detentum, ab eadem custod. extraxer. & abduxer; & alia, &c.

And a man shall have an Action of Trespass for taking his H Son and Heir, or his Daughter and Heir, and marrying her.

And the Writ is such :

Si R fecerit,&c.tunc pone,&c. W & B, quod fint,&c.Quare vi,&c. Johann', vel Johan', as the case is, filium vel filiam et hared. pred' R, apud I invent.rapuer', maritaverunt, & abduxerunt; & alia.&c.

And the King shall have an Action of Trespass for taking I

of his goods. And the Writis such:

Quare vi et armis bon. & catalla nostra ad val', &c. & alia enormia ibidem perpetravit, in nostri contempt', et grave dampn',

&c. et contra pacem nostram.

And for fuch Trespass done upon the soil and possession of the King, the use is for to have an Information of Intrusion for the King in the Exchequer, and the Def. there to answer it. And when he appeareth in the Exchequer, the course is there to bind him in Recognizance at his peril to leave the possession to the King: and yet it seemeth the King may have an Action of Trespass, Quare Ciaulum fregis.

&c. & Herbas depaft. fuit, &c. & Arbores succidit, &c.
And there are other Writs of Trespass, Quare Fossate

Sepes ipfius A fregerunt,&c.

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Wa-

ter is corrupted; and the Writ is:

Quare,&c. in separali solo ipsius A apud N fodit, et terram inde projecta in Fossatis suis ibidem projecti, & linum et canabum in eisch sossatis per quod aqua in foss existens per corruption. lini & canabi pred' adeoinsecta devenit quod Piscis in eisch sossatis existens ad val, &c. interitt; & al, &c.

A And another Writ of Trespass for assaulting a man in his house, and lying in wait for him, until he make Oath that he will not bring any Action against him, &c. and the Writ is

fuch .

Quare in ipsum I, &c. et ipsum I in quandam dom, ad quam pro vita sua salvanda ib. sugit, insecuti suer, et ipsum inibi per tempus non modicum obseder, et ipsum sic obsessum, quousq; corpor, præsti. sacrament quod aliquam Altion versus præs &c. occasione transgr. præd. seu aliâ occasione quacunq, non moveret, detinuer, &c.

B And if a man have Waif and Stray within his Mannor by Prescription, and another man taketh the Waif or Stray out 40 E.3.13. of the Mannor, &c. he who hath the Mannor shall have an Action of Trespass for them, &c. and that without any sei-

fure of them before.

And if a man take another man and imprison him, and compel him to make to him a Statute-Merchant, or a Release, or an Acquittance, he shall have an Action of Trespass for the same, and the Writs shall recite the matter, and the detaining in Prison of him, quousque, &c.

If a man have Wreck by Prescription, or by the King's Grant, &c. if Goods be wrecked upon his Lands, and another take them away, he who hath the Wreck shall have an Action of Trespass, Quare vi et armis, for thus taking without

seisure thereof before; and the Writ is such:

Ostensur', quare cum idem Th. Dom. Manerii de Eston Bavent existat, et ib. babere debeat, ipseq; et antecessores sui Dom. Manerii præd. à tempore quo non extat memoria bucusq3, babere consuever', wreccum maris infra præcinct. Manerii præd'; præd' Joccus & Robert. bona et catalla ad valenc. C. s. apud S infra præcinct. ejust. Maneria dterr. projecta, quæ ad ipsum Th. tanquam wrecc. pertin. deberent, vi et armis ceper. et asportaver', &c. Or thus, decem libr. in perunia, &c. Or, quare cum per Chartam, &c. habere debeat. &c.

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If a man fend his Servant to apprehend his Villain, and E to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Master another rescueth him from the Servant, and lets him go at large; the Master shall have an Action of Trespass for this Rescous, and not the Servant, for the wrong is done unto the Master, &c.

If an Abbot or other man hath a Hundred, and hath all F Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and fuch liberty, shall have an Action of Trespass against the Sheriff for the Goods which the Sheriff took, and the

fame shall be: Quare vi & armis,&c.

And if an Abbot or other person ought to have Toll in G any place, and fendeth his Servant to take the Toll, and another doth disturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, shall have a general Action of Trespass, Quare vi & armis they did assault his Servant, and disturbed him to take the Toll. And the Writ is fuch:

Quare cum idem Abbas, per Chart. progenitor' nostr' pred' quondam regum Angl', habere debeat Thelonium de rebus venalib. ad Villam de S venientib', iidem R et I in S, fervient.ipfius Abbatis, per ipfum ad hujufm' Thelonium in Villa præd.colligend. deputat', vi et arm. insultum fecer', et ipsum quo minus bujusm. Thelonium colligere et percipere potuit impediver'; et quad catall. per ipsum S pro bujusn. Thelonio nomine Distriction' ibid. capta et attachiata eidem S abstuler', per quod idem Abbas profic. de bujusm. Thelonio proveniens per magnum tempus amisit; & alia, &c.

And so if a man ought to have Toll in a Fair,&c.and his Servants are diffurbed to gather the same, he shall have the like Action for affault of his Servants, and for the loss of vid. 1 H.5.1. their Service, and for the disturbance made unto them, and

47 E,3.22. for losing the profit of his Toll, and all in one Writ. And if a man have a Fold in common with two other men, H and the one do diffurb him to fet up his Clays and Pales,

> and break them, he shall have an Action of Trespass against them in this form, Quare vi & armis, thus:

> Si Priorissa de T fecerit,&c. tunc pone,&c.E,&c. oftens. quare cum ead' Priorissa quandam Faldam apud F simul cum præd. E ac M de B habere debeat , ipfag; Prioriffa & ejus prædeceff. bujulm. Faldam cum pref. E et M, & eor' anteceff. à tempore quo non extat memoria, femper hucufque habere confuever'; præd E. claias et palos ipfius Prioriffe in Falda corund Prioriffe, E.

& M apud dit am Villam de F nuper erect. pofitos, vi et arm' fregit, et ipfam Priorisfam quo minus claias et pales in Falda prad', prout ad ipfam pertinuit, ponere, vel aliquod commodum de Falda illa percipere potuit, impedivit; & alia, &c.

A man shall have an Action of Trespass for taking of his

Apprentice, or for taking of his Servant.

K And the Churchwardens shall have an Action of Trespass for taking the Goods of the Church, either in their own

time, or in the time of their Predecessors.

And a man may have an Action of Trespassfor breaking of his House or Close, and alledge a continuance of the Trespass, and of the breaking thereof, from such a day unto fuch a day; as well as he may have for treading of his Grass

or cutting of his Corn,&c.

The Ordinary shall have an Action of Trespass for those Goods which he hath to administer as Ordinary; where a man dieth Intestate, and the Goods are taken out of his possession, he shall have an Action of Trespass for the taking thereof. But he shall not have an Action of Trespass for Goods taken out of the possession of him that died Intestate, but the Administrators shall have such Action; for the Ordinary shall not have an Action for Goods or Debts of him that died Intestate, but only an Action of Trespass for the Goods taken out of his own possession. And the Process in this Writ of Trespass is Attachment and Distringas; and if the Sheriff do at the Attachment or Distringas return Nihil, then he shall have a capias, and Alias, and Pluries, and Exigent, and fo Process of Utlagery against him.

If the King granteth a Protection unto a man, by which Protection he taketh him his Lands and Goods into his Protection, as the common course and form of Protections are; now if another man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the time that the Protection is in force, he shall have a special Action

of Trespass against him in this form:

Oftens. quare cum nuper susceperimus in protect' et defension' nostram A, homines, terras, res, reddit', et omnes possessiones suas, omnib' et singulis inhibent' ne quis injuriam, molestiam, damnum inferret feu gravemen ; id. B bona & catal. pred. A, dum fub protect. noftra fuit, apud N invent', ad valent. cent.librar', vi et arm' cepit et asportavit, et in homines, &c. per quod, &c. et alia,&c. ad grave damnum ipsius A, et cont. pacem nostr. Et habeas ibi nomina Pleg', et hoc Breve. Tefte,&c:

And also he who hath the King's Protection, if any man take his Goods, or enter into his Lands,&c. or beat his Ser92

vants,

vants,&c. he shall have a special Writ unto the Sheriff for to enquire of them, and to certifie the same before the King, &c. and it seemeth the King shall make Process against them by Venire facias, as upon an Indictment, and that thereupon

they shall be fined; and the Writ is such:

Rex Vic. Linc. falut'. Pracipim.tibi , quod per facrament. C probor. & legal.homin. de Com.tuo, per quos, &c. diligent. inquiras, qui malefactor. et pacis noftr. perturbator bona et catal. A, ad valentiam cent.librar', apud N inventa, quem suscepim. in defension. nostr' special', homines, res, redditus, et omnes post. snas, omnib & fingul. inhibentes , ne quis eis injuriam, molestiam, damnum inferret seu gravamen, vi et arm. ceper. et afportaver', et in homines suos ibid. existentes, insultum secer, et ipsos verberaverunt,&c.et alia;&c.ad grave damnum ipfius A, et contra proteit.noftram præd', et contra pacem noftram: Et Inquisition. inde distinct. et aperte facta nobis, sub sigillo tuo et sigillis eor. per quos facta fuerit, sine dilatione mittas, et boc Breve.

But note that there is a Statute made An. 28 E. 2. cap. 6. that willeth, that no Commission or Writ shall be from thenceforth granted unto the Sheriff, to enquire, &c. But if fuch Writ or Commission be granted, &c. Quere if it be good: it feemeth not, for this Statute is made only to bind the

King that he shall not grant,&c.

There is another Writ De Fano in Prato prostrat, et depasto; D and another Writ De Clauso Oftio, & Fenestris fractis,&c.

### Writ de Trespass sur le Case.

Here is another form of Writ of Trespass upon the Case E which is to be fued in the Common Pleas or King's Bench; and in that Writ he shall not say Vi & armis, &c. but in the end of the Writ he shall say contra pacem, and the

form is fuch :

Rex Vic', &c. Si Matilda de D,&c. tunc pone, &c. quod sit, &c. ad respond. tam nobis quam Matildæ, quare cum ead. Matilda nuper quoddam Freve nostrum de Prohibitione versus præf. I, ne ipse : Placitum in Cur. Christianitatis de catallis & de that it lieth debitis que non de Testamento vel Matrimonio sequeretur, in Cur. for casting a nostra impetraffet , eadenque Matilda dictum Breve nostrum præf.I apud C liberaffet; idem I, recepto dicto Brevi nostro,illud ibid. in luto projecit, et pedibus suis conculcavit, necnon Placitum pred' sequutus est in ead. Curia Christianitatis, in nostri contempt', et ipfius Matilda grave damaum, ac contra pacem nostram. Et habeas, &c.

Note well this Writ, Writ into the dirt. C.ompton 133.40.

Another

G

E

F Another Writ; Quare in aqua de Plim', per quam inter Humber et Gaunt navium et battellorum communis est transitus, ex transverso aque pilos desixit, per quod quadam navis cum triginta quarteriis brasii ipsius W submersa fuit, et viginti quarteria brasii pretii Cs. deperier', et alia enormia, &cc.

And if the Lesson do out the Executors of the Lessee of their Term, they shall have a special Action of the Case against the Lesson, and the Writ shall be by Summons, &c. and not by Pone per vadios et salvospleg, as the other Writ

of Trespass is; and the form is such:

Si Johan', Executrix Testam. E de C, secerit te, &c. tunc sum', &c. P et M, ostens. &c. quare cùm iidem P & M unum molendinum & sex acras terræ cum pertin. in N præs. E de C ad terminum qui nondum præteriit dimissisent, et idem E de C in Testamento suo præd. molendinum et terr', usque ad senem termini præd', præd. Executrici, ad executionem Testam. præd. indè saciend', legasset; præd. P et M, post mortem issius E de C, præd. molendet terras (durante termino præd') ingressie præd. Pet mino præd') ingressie, a præd. Executrici detinent minus sustè, in retardation. execut. Testam. predict', ut dic'. Et babeas, &c.

And if the Sheriff doth arrest a man upon a Capias directed unto him sued forth upon a Statute-Merchant, and afterwards set him at liberty, he who sued the Writshall have a special Action upon the Case against the Sheriff,

which is fuch:

A Rex Coronatoribus salut'. Si A secerit, &c. tunc pon', &c. Vic. nostrum Sust. quod sit, &c. ostens. quare R, mercatorem, nuper per Breve nostr. eid. Vic. direct', prætextu cujusd. Recognitionis centum marcarum eid. A per pref. R juxta form. Statuti apud. Acton Burnel nuper editi fact', capt. & in custod. ejusd. Vic. apud O existen', præf. A de pred. centum marcis minite satisfacto, contra voluntatem ipsus A libere abire permisit, ad grave damnum ipsus A, et in retardation. execution. Recognitionis predict', ut dicitur. Et babeatis, &c.

And if the Sheriff in a Writ of Account or Debt return upon any, quod non est inventus, nee habet terras, &c. per qu. distringi poterit, &c. for which a Capias is awarded against him, and he is arrested thereupon, where he hath sufficient Lands, or Goods and Chattels; then he shall have an Action upon the Case against the Sheriff, directed unto the Co-

roners, as before is faid,&c.

And so another Writ; If the Sheriff hath a Prisoner 14 H.7.10. committed unto him for Debt,&c. and asterwards he suffer & &z E.4.1; him to go at liberty before the Debt be satisfied, &c. he 34 H.6.6. shall have an Action upon the Case against the Sherist; and 21 H.7.30. yet 36 H.6.3.

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yet it feems he may have an Action of Debt against the

If a man be indicted of Felony before any Juftice, and D one T, as one of the four men of the Town, and Reeve, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Baily of the Hundred or other Officer shewesh unto T, that he who is acquitted hath a Writ of Conspiracy against him, and that he hath a Capias to arrest him, by which he is arrested and imprisoned until he pay fix marks for a Fine for his deliverance, &c. he shall have an Action of Trespass upon his Case: But it seemeth he may have a general Action of Trespass in that case upon Fasse imprisonment, if he have not any Writ directed unto him.

If a Replevin be removed out of the Liberty by Pone in-E to the Common Pleas, and afterwards (pendant the Plea there) the Baily of the Liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattel and impoundeth them, by means whereof fome of them die for want of Food; the party grieved shall have an Action upon the Case against the Baily of the Liberty, who awarded that Return to hold Plea after the matter removed

in the Common Pleas.

If a man doth attach another or his Goods for Debt,&c. F in a Liberty, and after the Eaily, by Covin betwixt him and the Defendant to discontinue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff shall have an Action upon the Case against the Baily, and the Writ is such:

Si A fecerit,&cc. tunc sum' I Ballivum magnæ Cur. sive Mercati de N.quod sit,&cc.ostens.quare cùm idem Ball.ad Querimoniam præd. A. B per quædam catall. sua, ad respondend præs. A in Cur. prædict' secundum Legem mercatoriam, prout moris est in regno nostro Angl', de debito decem librarum, quod idem A de præs. Bexigit, attachiasset, ac in Loquela prædict' in eadem Cur. inter partes predict', quod se in Inquisitionem indè posur', in tantum processum fuisset; predict. Ballivus pendente cwam eo Inquisitione predict', par Colins. inter insum et præsatum. B babitam in Cur. predict', malitios recessit, et Inquisitionem prædict. capre recusavit, per quod Placitum præd. extitit discontinuat'; idémque Ballivus catalla prædict. eidem B, præs. A de debito præd. non satissatt, posemodum liberavit, ad damnum ipsius A viginti librarum, ut dicitur,&cc.

And a man shall have an Action of Trespass upon the G Case against his Neighbour who hath Lands betwirt him and the Sea, and ought to make Banks, and cleanse certain

Ditches

Ditches and Sewers betwixt him and the Sea, and he doth not cleanse them as he ought to do, by reason whereof his Land is furrounded, &c. he shall have his Action upon the Case against him for not mending the Banks, and cleaning the Ditches and Sewers,&c.

If a man be committed unto the Gaol for Debt or arrearages of Account, and the Gaoler of malice lay so many Irons upon him, or fet him in the Stocks, or keepeth his Victuals from him, by reason whereof he is so spent, that he becomes lame, or hath other infirmity; he shall have an

Action upon the Case against the Gaoler.

If a man doth diffrain any Priors, or other Prelates Vid. Br. Horse, whereupon he is riding in his journey, for or upon Attachment any Contract, Debt, or Trespass done by him or his Prede-cellor, when he might have differented or attached him by ceifor, when he might have distrained or attached him by ther Goods, other Goods or Chattels of the faid Prior or Prelate, then he may then he shall have an Action upon the Case, which is attach these fuch:

Si A, Prior, &c. pone B,&c.oftenf.quare cum non liceat alicui Prælatum, Magnatem, seu aliquam personam Ecclesiaftic' regni nostri, per idem Regnum alicubi transeuntem, occasione alicujus Contractus seu debiti per equitaturam suam propriam distringere, cum alia Averia seu catalla ibidem habeat, per que rationabilis Districtio super insum fieri valeat; pred. Bpref. Priorem per Villam de C transeunt', occasione cujusdam Contractus inter S quondam Priorem de &c. Pradecefforem prad. Prioris, et præd.B, dudum, ut dicitur, per quendam Equum palfridum Suum, quanquam per alia Averia et catalla tunc ibid. rationabilem Districtionem super ipsum fac. potuiffet, distrinxit, et palfridum illum din malitiose detinuit, per quod negotia sua ardua, pro quibus transitum suum præd. fecerat, perierunt; et alia,&c.

And if a man promise and take upon him to make for a vide Infra: nother man certain Carts for Carriages, or other thing, and taketh mony before-hand for to do the fame, and afterwards he doth not make them according to the promife and undertaking; the other may have an Action upon the Case

against him, and the Writ shall be such:

Si W,&c. tunc pon. I,&c. oftenf. quare cum idem I tres currus provictualibus et hervesiis issius W ad partes transmarinas ducend. pro certa pecunia summa, cujus unam ; art. pre manibus recepit, infra cert. termin. inter eos concord. facere et fabricare and Saffumpfiffet: idem I carrus gred. infra terminum pried. facere et fabricare non curavit, per quod idem W diverfa bona et catalla jua ad valenciam C. marc. que in curribus pred.

duci debuiffent, pro defectu cur. prad, totaliter amifit, ad grave

dampnum ipfius W, at dicitur : Et habeas, &c:

And if a man be lodged in any Inne, and any of his Goods B be taken or stollen from thence by a stranger, he shall have an Action upon the Case against the Inne-keeper, and the Writ shall be such:

Rex Vic &c. Si A fecerit,&c. tune pone,&c. B.quod fit,&c. oftenf. &c. quare cum secundum Legem et cons regni noftri Angl. bospitatores, qui hospitia communia tenent, ad hospitand. homines per partes ubi bujusmodi hospitia existunt transeuntes, et in eisdem hospitantes eorumque bona infra hospitia illa existentia. absque subtractione custodire die ac nocte tenentur, ita quod pro defectu ipsorum hospitatorum seu servientium suorum hospitibus bujusmodi dampnum non eveniat ullo modo: quidam malefactores quendam equum ipsius A, pretii xl s. infra bospitium ejusd.B apud S hospitati, inventum pro defectu ipsius B ceper.et abdux', et alia enormia,&c. ad grave dampnum,&c. Et habeas,&c. Teste, &c.

9 R.6. Adion fur le Cafe Is.

If a man do fell unto another man a Horse, and warrant C him to be found and good, &c. if the Horse be lame or diseased, that he cannot work, he shall have an Action upon the Case against him.

And so if a man bargain and sell unto another certain pipes of Wine, and warrants them to be good, &c. and they are corrupted, he shall have an Action upon the Case against hmn.

But note, it behoveth that he warrant it to be good, and the Horse to be sound, otherwise the Action will not lie. For if he fell the Wine, or Horse without such warranty, it is at the others peril, and his eyes, and his tafte ought to be

his Judges in that Case.

But if a Smith prick my Horse with a nail, &c. I shall D have my action of the Case against him, without any warranty by the Smith to do it well. And the Writ shall be, Quare quendam clavum in unum pedis cujusdam equi ] apud N fixit, per quod putridus devenit, sic quod idem equus per magnum tempus laborare non potuit, & idem | profic. equi sui pred' per idem tempus amisit, ad dampn', &c. For it is the duty of every Artificer to exercise his art right, &c. truly as he ought.

And if any Sheriff or under Sheriff do distrain any E Parsons or Vicars, or other Spiritual persons, in any Lands whereof they are possessed in the right of their Churches, they shall have actions upon the Case against the Sheriff in

this form:

Rex, &c. Si A parsona Eccesia de C fecerit, &c. tunc pone, &c. B Vic. nostrum Somers. & C Subvic. nostrum equsdem Com. quod fint, &c. oftenf. quare cum in articulis cleri regn. noftri per dominum E nuper Regis Angl. progenitor. nostrum concessis inter alia continetur, ne ministri nostri, ut Vic. aut alii cap. animalia rector. Ecclesiarum pro districtionibus aliquibus in via Regia, nec in feod. in quibus Ecclesia ill. olimfuer. detata; pred. Vic. & Subvic. averia pred. A apud L in feodo ipfinis A Ecclefia fue prad. de quo eadem Ecclefia olim dotata fuit ceper. Gea abinde ufque S duxerunt, & imparcaverunt, & ea imparcata ibidem diu detinuer. contra legem, & consuet. regni nostri,& contra form articulorum prædict. & contra pacem nostra. Et habeas &c.

If a man ought to be quit of Toll for himself and his. Tenants and men, in every Market or Fair, &c. Now if any Officer or Bailiff take Toll of him his Tenants or menhe of whom the Toll is taken shall have an action of Trespass upon the Case against him who took the Toll, or di-strained his goods for the Toll. And also he may have a Writ out of the Chancery directed unto the Bailiffs or fuch Officers, that they fuffer them to be quit of Toll,&c. and he may have an Alias and a Pluries, and Attachment thereupon against the Bailiffs or Officers, if they do not obey fuch Writs, and the Pluries shall be returned into the Com-

mon Pleas or Kings Bench.

If a man hath a Mannor within any Honor, and by prefumption hath had view of frankpledge of his Tenants within his Mannor,&c. Now if he or his Tenants be diftrained by the Lord of the Honor, to come unto the Leet of the Honor, and to present there those things which ought to be presented within the view of Frankpledge within the Mannor. He who is so distrained may have a general action of Trespass for this Distress, or he may have a special Writ directed unto the Bayliffs or Officers of the Honor reciting the whole matter; commanding them that they fuffer the Lord of the Mannor to have and to hold his Leet of his demesn, &c. as he hath used to do; and that they do not distrain him or his Tenants in any wife to come unto the Leet of the Honour, to present any thing which ought for to be presented in the Leet of the Mannor; and also comprehending in the same Writ, that if they have taken any diffress for that cause, that he then re-deliver them, &c. And upon that he may have an Alias and Pluries; and Attachment against them if they do not obey the aforesaid Writs.

And also if a man hath used to have a gulf of water in A any water, and it hath been used that no other should make a gulf in the same water between his gulf and the gulf of B. now if another doth make another gulf betwixt them, he shall have his Action upon the Case in this manner. Si A persona Ecclesia de C fecerit, &c. R de T,&c. quare cuidam A habere debeat, ipfeq; & predeceff. fui perfon. Eccl. præd. à tempore que non extat memor. semper hactenus haber. cons. quend. gurgit. in aqua de W in Bita quod in ead.aqua inter gurgit.ipfius A, & gurgit'S de E, domini Man' de H nullus altquem gurgitem levare, palos seu claias figer, aut retia aliqua pro pisce inibi cap. ponere debeat, seu conf. aliquibus temporibus retroactis : idem R claias & palos int' gurgit.pred' A & S in ead. aqua fixit, & retia pro pisce inibi capiend. posuit & ibidem piscatus fuit, & piscem inde cepit & afport. per quod idem A profic. gurgitis pred' ad valenc. C s.amifit, & al' &c. Et habeas,&c.

And if a man hath a liberty to retorn Writs, and to exe-B cute them, if the Sheriff ex officio enter into the Liberty, and execute any Process there; the Lord of the Liberty shall have an Action upon the Case against him; and these

Writs do appear in the Register.

If a man be found in arrearages before Auditors, for which the Auditors do commit him to the Gaol, and afterwards he escape from thence, now the Gaoler ought to pay the mony which was arrear upon the Accompt. And the Gaoler shall have his Action upon the Case against him who escaped to answer unto the King for the Escape, and to the Gaoler for the damages which he hath sustained; The form of the Writ is such:

Rex Vic', &c. Ex gravi querela A accepimus, quod cum B compotum suum de tempore quo fuit Ballivus C in N, eidem C infra libertat. de K nuper reddiderit. Et idem B pro arreragiis compoti illius per auditores ejusdem compoti postmodum arrestatus, & pradict' A custod. gaol. nostra libertat. prad. liberatus fuit, in eadem gaola custodiend. quousque prad C de arreragiis prædictis juxta formam statuti de hujusmodi receptoribus & ballivis provisi plene satisfaceret, prædictus B à custodia predict. A, predicto C de arreragiis predict. non satisfacto, contra pacem noftr. evefit, occasione cujus evasion. idem A prafato C de arreragiis illis juxta formam statuti prædicti plene satisfecerit, inipfius A damnum non modicum & gravamen. Et quia transgr. illam si talit. perpetrata fuerit, relinquere noluimus impunitam, Tibi pracipimus, quod si pradict. A, fecerit te secur. tunc prædict. B per corpus suum attachias, ita qued eum habeas coram nobis,&c. ad respondend. nobis de eva-Gone

fione pradict', & pradict. A de damnis que suftinuit occasione

evafionis illius. Et habeas ibi boc Breve,&c.

And if a man play with another at Dice, and he hath false Dice with which he playeth, and gets the others mony with these false Dice, he who loseth his mony may have his Action upon the Case for this deceit, and the form of the Writ is fuch:

Rex Vic',&c. Si A fecerit, &c. tunc pone, &c. T de D, &c. quod sit, &c. oftens. quare cum idem T de D, machinans ipsum A subdole defraudare, & diversas pecuniar. summas de eod. A extorquer. eund. A ad ludend. ad talos cum ipio T, ad quendam jocum vocat. le Dozen, pro divers. pecuniar. summis apud Burton super Trent, excitasset & procurasset, ac idem A cum ipso T ad talos ad jocum prædict' ibid. lusisset, præd'T quosdam talos veracit. titulat. eidem A tradidit ad jactandum, & cum tali præd. ad manus ipsius T devenire contigissent, idem T quosdam alios talos falsos & subdole titulatos, quos numerum duodenarium, & non alium quolibet jactu attingere scivisset,. falso & fraudulent. projecit, per quod idem A magnas pecuniar. summas eidem T ad jocum illum amisit, ac idem T summas illas Sub colore lucrifalso & deceptive cepit & asportavit, ad dampnum ipfius A 5 li. ut dic', & habeas ibi nom ina pleg. & hoc Breve. Tefte,&c. And this Writ was fued Anno 5.E.4. which fee in the Register, 240.

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with false Dice,&c. by which he gets the Plaintiffs mony; it feemeth the Plainriff may maintain this Action well enough, because the enticement is not the cause of the Action, but the casting of the false Dice, by which he gaineth the mony,

#### Writ de Disceit.

E THis Writ lieth properly where one man doth any thing Ve Long. in the name of another, by which the other person is \$ E.4.40. damnified and deceived; Then he who is so damnified shall 18 E.2.Dif have this Writ, and the Writ is without the words vi io ceit 41. armis, and the Writ is fuch: This Writ cannot be

fued by Attorney 19 H.6.50. it shall not above for form, if it hath matter of sub-

Rex Vic' Lincoln. Salut'. Si A fecer', &c. tunc pone, &c. B, &c. ad read bend. tam nobis quam præfat' A, quare quodd. Breve nostrum per fin. xx s. ad opus nostrum per breve præd.capiend.nomine

wit of y court or ply Blat High! 1 :29:

[96]

26 E. 3.65. predict. A, boc penitus ignorant. fraudulent. & malitiofe in Difceit 58. Cancellar, nostra impetravit, in deception. Curia nostrad grave The King damnum ipfeies A, & habeas ibi nomina pleg. & hoc Breve, &c. shall have

this Writ, if no other will fue it, because it is penal. 19 H, 6.44. So if a man levy a fine, contess an Action or a Recog. or Statute, or appear as vouchee in my name.

> By which it appeareth, That if a man do purchase a Writ in my name, for which Writ I ought to pay a fine in the Chancery, as the course there is for every Writ of Debt of the sum of 40 1. or more, to pay for every Writ of 40 l. vi (b. and 8 d. and if it be of 100 marks vi (b. viii d. And fo for every 100 marks vi fb. viii d. and fo for every Writ of Plea of Land, which is Pracipe quod reddat, if it be not a Writ of Right Patent, for every Writ which is of the yearly value of 5 marks vi fh. viii d. &c. and so according to that rate. And then if a man purchase such Writ in my name, and I know not thereof, I shall have this Writ of Disceit.

And if I do present one unto a Church whereof I am A the Patron unto the Ordinary, and one T doth diffurb me, for which disturbance another doth purchase a Quare impedit in my name returnable in the Common Pleas against the faid 7, I not knowing thereof, and afterwards causeth the Writ to abate, or me to be Nonsuit in that Writ, I shall have this Writ of Disceit against him who purchased that

Writ.&c.

If one forge a Statute Merchant in my name, and sueth a B Capins thereupon, for which I am arrested, I shall have this make an ob- Writ of Disceit against him that forged it, and against him

ligation in who fued forth the Writ of Capias, &c.

If a Prior or Abbot have Tithe to present unto a Vica- C ridge whereof they are Parlons imperionee and Clerks feceit, because cular or Regular at their wills : and afterwards another doth I may plead forge a grant in the name of the Abbot or Prior under their Covent Seal, that they do grant to one of the Parishioners, &c. that they shall present a secular Person, and not a Regular, as a Canon or fuch like, &c. The Prior or Abbot may have a Writ of Disceit, and the form shall be such:

Si Prior Bartholomei de suburb. Lond', &c. ponite W & B, &c. quod fint coram nobis, &c. in octabis fancti Martini ubicunque,&c. oftenf. quare quum idem Prior personam secularem vel regularem idoneam ad vicariam sancti Sepulchri extra muos Lond quam quidem Ecclesiam idem Prior tenet in proprios ufus, provoluntate sua presentare debeat, & hactenus consuevit, pradict. W & B collufione inter sos pr.elocuta, prædict. Prio-

10 H.6.44. 7 H.6.33.

19 H. 6.44. If a man my name, I shall not have Dif-Non eft faaum.

The.

TEM

rem malitiose prægravare machinantes, sigillum commune prioratus prædicti contrasecerunt, & quasdam literas patentes, per quas prædicti contrasecerunt, & quasdam literas patentes, per quas prædecessorem præd, prioris concessis debuer, idem Prior et Convent, loci præd personam secular. & non alium ad vicar, illam presentare deberent cum eodem sigillo contrasacto consignari sec. & literas illas sigillo pred consegnatas in quadam causa ad instantiam ipsius W tunc Paroch. Eccles. præd, inter ipsium W et præs. Prior coram Officiali Cur. Cant. Christianit, super motione frat. R de F canonic. præd Priorad presentac. sus sus un pre Episcop. Lond, admissi mota exhibuere & susum Priorem laborem et expensis virtuse literarum præd diversimode in hac parte fatigari procurar, in ipsius Prioris dispend, non modicum & gravamen. Ethabeas ibi nomina plegiorum, et hoc breve, & c.

And if a man be Attorney for another in a plea real against the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes default for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Attorney, and the

Writ shall be such:

Ostens. quare quum idem A præs. R in loquela quæ suit coram eisdem Justic nostris per breve nostrum, inter K petent. & præs. tenent. de xx. acris terræ eum pertin. in C, attorn. suum coram nobis secisset ad lucrandum vel perdend. in loquela præsit. præs. B, collusione inter ipsum et præs. C habita, se ad quend. diem per præs. Justic' in eadem loquela in banco præs. præsixum gratis absentaverit, per quod idem A pro desestu ipsus B torram præs. per considerationem cur nostræ amisit, in deceptionem ejusem cur. nostræ in ipsus que damnum, & exharedationis

periculum manifestum. Et habeas, &c.

And if an Action of Trespass be brought against many, and the Plaintiff and one 1 by covin between them cause certain persons to come into Court, and say that they are the same Desendants, and that they make the said 1 their Attorney, and afterwards the said 1 as Attorney for the Defendants pleadeth unto issue, and afterwards suffer the enquest to pass by desault, by which the Plaintiff doth recover against the Desendants: Now those who are the true Desendants shall have a Writ of Disceit against I, who appeared as Attorney for them, &c. & the writ appeareth in the Register.

And foif R doth recover in an affize against w certain Tenements and Damages, and because w hath nothing in the same County to levy the Damages, R removeth the Record of affize into the Kings Bench of Common pleas, to see forth Process thereupon, and to have Execution of the said Damages recovered, for which the said w to defraud the

where a

faid R of his Execution, fueth forth a Writ to remove the Record in Chancery, furmifing that he will have an attaint thereupon before the Justices of Assize, &c. by which the Record is removed into the Chancery, and delivered to the faid w to carry to the faid Justices of Assize, whereupon he may fue his Attaint. Now if the faid wwill not fue forth the Attaint, but delay him, to out him of his Execution, R who recovered shall have a Writ of Disceit against him upon

the matter, which appeareth in the Register.

One I de A fueth a Præcipe quod reddat, against c and TA his Wife, who plead a fine levied to the faid T by one F and Margaret his wife, Mother of the Demandant, &c. and the Defendant faith, That his Mothers name is Margery and s E.4.40. B. contest. & not Margaret, and after day is given by the Court, at which day c and his wife procure and cause a stranger to come inavoid.40. to Court, and confess the fine as the Tenant hath pleaded, by man levieth which the Demandant is barred, the Demandant shall have a fine of my a Writ of Disceit against the said c and T his wife, as appearname, I may eth by the Register. But it seemeth, that if Margery do levy confeis and a fine of her Land by the name of Margaret, that she and her Heirs shall be concluded to fay, that she hath another avoid the name. But the Tenant may plead, That she by the name of Margaret did levy a fine of her Land, &c., and that hath fame, as to fay that another of been done where a woman had to her name Agnes, and the name levied levieth a fine by the name of Anne, it hath been awarded good, and shall bind her and her Heirs, and shall be pleaded, the fame; without that That she by the name of Anne levied the fine. that I levied

If a man fue a Pracipe quod reddat against divers Tenants, B 20 H.6.10. and the Writ and they purchase a Protection for one of them, surmising was brought that he is beyond the Seas upon the Kings fervice, whereas where he he is and alwaies hath been remaining in England, by which was at the

the same; for I shall not have Disceit by Linteren and Dandy.

time of this the Demandant is delayed, The Demandant shall have a Writ of Disceit against the Tenants for that delay, and the protection. Writ shall be such: 44 H.3.4.

If a man fueth a protection and doth not go, this Writ lieth, contrary if he go, though he prefently return.

> Si A fecerit,&c. tunc pone B & C,&c. quod fint coram,&c. ad respondend, tam nobis quam A, quare cum idem A in Curia nostra coram Justic' nostris de banco implacitasset per breve nostrum prædictos B & C, de tribus partibus Manerii de S,cum pertin. iidem B & C, cur. nostræ ac legi & consuetudini Regni nastri Anglia manifeste illudend. & prosecutionem pradict. A

in hac parte prorogat. machinando ad quendam diem partibus prædict. in eadem loquela coram præfatis Justic præfixum quofdam literas nostras de protectione continent. ipsum C ad partes transmarinas in obsequio nostro tunc profe &urum fuiffe, or ipsum fic quietum effe de omnibus placitis & querelis, except. placitis de dote unde nihil habet, & Quare impedit, & aff. novæ diffeifine, & ultime presentationis, & attinite, & exceptis loquelis quas coram Justic' nostris itinerantibus in itineribus suis summoniti contigerit, coram præfatis Justic' porrigi fecerint, ipso C tunc post & anteain Ang. continue commorante, per quod loquela illa coram præf. Justic. remansit sine die, in nostri contemptum manifestum. & deceptionem Curia nostra prad. ac legum & consuetud.præd.illusionem manifestam,necnon ipsius A dispend. non modicum & exhared. periculum manifestum. Et habeas ibi, &c.

In a Pracipe quod reddat, if the Sheriff return the Tenant fummoned where he was not fummoned, by which the Defendant loseth his Land by default at the Grand Cape returned, the Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false return, and by that Writthe Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant against him that recovered before any entry or possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the Pracipe quod reddat, and the Summoners, Viewers and Pernors in the Grand Cape are dead, and then he shall not have a Writ of Disceit after their deaths; For whether he were fummoned or not shall be tried by the Summoners and Viewers, and Pernors by examining of them. But see 3 E. 3. That the Tenant shall not have a Writ of 3 E.3. Dif-Disceit before the Demandant hath entred, Tamen quære. And ceit 47. in a Writ of Disceit the process shall be made against the ceit 54. Summoners, Viewers and Pernors to be examined thereupon, &c. And if the Demandant who recovered by falle return of the Sheriff make a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered, and against his Feoffee and the Sheriff: and if the Demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the Demandants heir, and against him 38 E.3.16. who is Tenant of the land, if the Summoners, Viewers and cont. Pernors be living: But if the Summoners, Viewers, or Pernors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners, Viewers, or Pernors be alive, for if they fay that they did not funmon him, then the

Plaintiff in the Writ of Disceit shall recover his land and shall be restored, &c. for it ought to be done by two Summoners at the leaft, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plainriff in the Writ of Disceit ought then to be restored,&c.

And in a Scire facias to execute a fine, if the Sheriff re. D turn the Tenant summoned by two Summoners, if it be not true, yet the Tenant by the return shall lose the land, for execution shall be awarded upon the return if the Tenant do not appear, and then the Tenant shall have a Writ of Discert against the Sheriff, and him who had execution, and him who is Tenant, and shall be restored to the land.

And so if a man sue a Scire facias upon a recognisance of debt, and the Sheriff return the defendant summoned where he is not fummoned, for which the plaintiff hath Execution awarded, the defendant shall have a Writ of Disceit against him who had execution, and the Sheriff shall be punished by this Writ for his falfity, and the party who recovered

shall make restitution of that he recovered,&c.

And if a man levy a fine at the Common Law unto ano- A ther of land which is in ancient demesn, the Lord of ancient deniesn shall have a Writ of Disceit against him who levied the fine, and he who is Tenant shall avoid the Fine, and there he who ought to give the land shall be restored unto his possession, and title which he hath given by the fine, because the fine and gift thereby is avoided. But if he who levieth the fine, have after by his deed released unto him who hath the possession by the fine or by the deed, confirm his estate in the land, then he unto whom the release or brought Dif- confirmation is made, shall have and keep the land notwithstanding that the fine be avoided, because that release or profits of the confirmation made unto him being in possession, hath made his estate firm and rightful, against him and his heirs who released or confirmed the same.

If a man do recover in a Writ of Wast where the Tenant B was not summoned, &c. the defendant shall have a Writ of

19 E.3. Dif- Difceit, and shall be restored, T. 9 E.3.

If husband and wife lofe the land of the wife by default, C they may fue a Writ of Disceit, and if the husband dieth, it seemeth the wife may sue a Writ of Disceit to be restoceit4.he fall red to her land,&c.orhave a cui in vita upon the Statute at her election; and the Writ of Disceit shall be directed unto the same Sheriff who did the Disceit and false return, and not unto the Coroners, as appeareth, Trin. 20 E. 3. Yet it

12 is Term de leu cont for he days fremeth it shall be by coroner it fame short nman sherit Tit Dicest 1232:

1987 35 H.6.46. \$ E.4.6.cont. where a man

lofeth by Pracipe in Capite, where he ought to have fued in the Lords Court, and the Lord ceit for the

Court. 48 E.3.20. 17 E. 3. 18.

20 E.2. Difceit. q.ac.

ceit 3. 19 E.2. Difceit 56. 20 E. 3. Difnot have Difceit by

Willy Hill

feemeth it is not Error, if it be directed unto the Coroners, 20 E.3.

D And in a Writ of Disceit, if the Sheriff return one Summoner dead, yet the other Summoner shall be examined, &c. 18 E.4.1.

And if it be found that he did not summon, &c. the party shall be reftored unto the land, and so if one Viewer, or Pernor did not do that, which he ought to do, the party shall be reftored, because it ought to be done by both, &c. But if Summons be by four men as long as two of them be alive, the Tenant who lost may have a Writ of Disceit.

E And a Writ of Discert lieth against him who embesseth 19 H.6.29.

a Writ, and also against him who procureth another to em-

besle a Writ, if it be embesled,&c.

F And if a man doth bargain with another to enfeoff him of certain lands, and afterwards he enfeoffeth another man, 16 E.4.9. he with whom he made the bargain shall have a Writ of Disceit.

G And if a man do recover in a Quare impedit by default, 16 H. 6. &c., if the Defendant be not fummoned, he shall have this Disceit 15. Writ, and the summoners and pledges upon attachment shall 27 H. 6. 5 ve. be examined thereupon. And if the Disceit be found, he 34 E. 3. Dischall have a Writ to the Bishop, &c. for him.

If an Action of debt be brought against two as Executors, where one of them is not Executor, if he who is not Executor the Def. tor confess the action; he who is Executor shall have a outled.

Disceit against him and recover as much in damages.

9 E.4.

If an Attorney be not informed by his Client to plead in Lit.4c.

any Action, and he plead, Quod ipse non est veraciter informatus, & ideo nullum responsum, &c. the same shall be entred to 10 E.4.9. save him of damages in a Writ of Disceit brought against

him by his Mafter,&c.

If a man fell cloaths, and warrant them to be of a certain 11 E. 4.6. length, if they be not of such length, he who brought them shall have a Writ of Disceit against him upon his warranty, 5 H.7.41. although the warranty be only by word: but if the warranty be made at another time after the bargain made, then it ought to be in writing, otherwise he shall not have an action upon that warranty: for he shall not have an action of Disceit therefore, if the warranty be not made upon the bargain, and at the time of the bargain.

The Writ of Disceit ought to be brought in the County 9 A.S.7.

where the Disceit is supposed to be done.

M If a man recover in a Practipe in Capite by default where \$ E.4.6. the lands are not holden of the King, nor he hath not the Lords License to sue in the Common Pleas, the Lord shall

nave

have a Writ of Disceit, and recover damages; but the recovery shall stand in force, and the Lord shall have Seignory, and he who recovered shall also hold over of the King by way of Estoppel.

If a man procure another to fue an Action against me to N

trouble me, I shall have a Writ of Disceit.

A Writ of Disceit shall be maintainable against the At- O torney and the Sheriff, because they put a Writ of Habere facias seisinam upon the file of the Sheriffs Writ, where they

have not any Record to warrant it.

If a man levy a fine of Land in ancient demesn, and also p of Land at the Common Law, the party shall have a Writ 21 E.3. 20. 5 E.4.6. of Disceit for the ancient demesn Land, and shall avoid the 17 E.3.31. fine for that Land, and the fine shall stand good for the Difceit 37. Land at the Common Law.

If a man lose Lands by default in a Pracipe quod reddat, Q and dieth, his Heir shall have a Writ of Disceit as well as

the Father, and shall have restitution. If a man have Execution by default upon a Recognifance R ina Scire facias fued against another, and the Defendant dieth, his Executors shall have a Writ of Disceit, and shall be restored, &c. If the Disceit be found that their Testator was

not warned, there the Garnishors shall be examined,&c. And if a man recover an Annuity, and afterwards fueth S 18 E.3. Dif- a Scire facias, and recovereth by default, the Defendant shall have a Writ of Disceit if he were not warned.

And the Vouchee shall have a Writ of Disceit wherehe A

loseth by default if he were not summoned, &c.

In a Pracipe quod reddat against the Husband and Wife at B the grand Cape, the Husband appeareth in Person, and the Wife appeareth by Attorney, who hath a Warrant which is 28 E.2. Dif- insufficient, by which judgment is given upon the default of the Wife against the Husband and Wife, &c. yet they shall have a Writ of Disceit if they were not summoned,

&c. And where a man loseth by default in a Quare impedit, or C Waft, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manucaptors upon the diffress

shall be examined, when the Writ of Disceit is brought brought therefore. See in the title of Disceit in the abridg-

If a man fue a Writ of Monstravit against another to ac. D count,&c. where he hath sufficient Lands in another County, by which he may be brought to answer by Writ of Account, the Desendant shall have a Writ of Disceit against

ments for that matter.

15 E.3. Difceit 43.

18H.2.16.50.

[99] ceit 42.

3 & 4 E. 3. Disceit 45.

ceit 54,55.

ro E.z. Difceit 56.

the Plaintiff who fueth the Monstravit quod ve. Mich.9 E.2. Fitz. Difceit. 42.

If Tenant for life loseth by default where he was not fummoned, and dieth; he in the Reversion shall not have a Writ of Disceit, because he shall not have a Writ of Error, &

if not by the Statute,&c. If a man be Tenant for life of a Mannor in ancient de-

meln, and the Tenant of that Mannor doth levy a fine of his \$ E.3.5. So Land at the Common Law, the Lord of the Mannor who is of Leffee of Tenant for term of life, shall have a Writ of Disceit, and years. after his decease, he in the Reversion shall have a Writ of Disceit, and reverse that fine.

If the King doth recover in a Pracipe quod reddat, or in 2 Formedon against another man by default, the Tenant shall have a Writ of Disceit as well as he shall have a Writ of Error, where the King recovereth by erroneous process, &c.or erroneous Judgment. See for this matter, M. 10 H.4. in title

Traverse in the Abridgments.

And this Writ of Disceit shall sometimes issue out of the 22 E.j.Dis-Common Pleas, or he may fue it out of the Chancery if he ceit. will, as if a man lose Lands by default in a Pracipe quod reddat in the Common Pleas, the Tenant if he were not fummoned, shall have a Writ of Disceit out of the Common Pleas, if he will, or out of the Chancery.

And so if a man have Execution upon a Recognisance in the Common Pleas, or Kings Bench by default, &c. the De- 17 E.3.12. fendant shall have a Writ of Disceit, if he were not sum- Disceit 39. moned out of that Court where the Execution was fued,&c.

or out of the Chancery at his Election.

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And there are diversother Writs of Disceit, in the form of a Writ of Audita querela, as if one fue a Precipe quod reddat against another, and the Tenant is essoyned at Quind. Pasch. which essoyn is adjorned until 15 Trin. the Term fol- 17 E.sr. lowing, and the Demandant and his Attorney by Covin be- Disceit 9. twixt them recovered a Writ in the file of Writs, that the Tenant hathmade Nand Mhis Attorneys joyntly and feverally at the faid Quind. Pasch. by which the Demandant challengeth that elloyn, because he had Attorney in the Writ not effoyned, by which at the day of Adjournment the estoyn is quashed, and the Demandant recovereth the land by this default at Quind. Pasch. Now the Tenant shall have a Writ of Disceit against the Demandant and his Atcorney, and the form of the Writ shall be in the nature of Audita querela, and shall be directed unto the Justices of the Common Pleas, and is fuch:

Rex

Rex Justic' suis de banco salutem. Monstravit nobis I de B quod cum W, de B nuper implacitasset ipsum I coram vobis in banco pred. breve nostr. de uno mes.&c. in B& placit. pred. ad caption. inquisition. propriæ persequut. fuiffet, diesque partibus prædict. à die Pasch. proxim.præterito, &c. in xv. dies data extitisset, ad quem diem idem I se fecit essoniari, & esson. ill. adjudicat. fuit usque ad xv. S. Irin. tunc proxim. sequent.pradicig; W & P attorn. sui collusion. inter eos præhabita machinant. præf. I de tenemento prædict. exharedar. S de F, fervient. ipfius W de B & W de P, attorn. ipsius I ipso die penitus ignorante recordari, & breve de attorn. in filaciis brevium in XV. Pasch. in banco pradict. & quandam calumniam supradict. esson. poni fecissent, & eson. pradict.pro eo quod pradict. I attorn. suum in eodem placit. habuit non jacere afferuiffet, quod ad dict. xv. S. Trin. seifina de tenemento pradicto pro eo quod attorn. prad. I ad dictam quinden. Pasch. effoniatus non fuerit quod eidem W de B per considerationem Curia extitit adjudicata, in deceptionem Cur. nostræ prædict', & ipsius I grave damnum, ac exhæredationem manifestam, super quo idem I per petitionem suam coram nobis & confilio nostro in parliamento nostro exhibitam, Nobis supplicavit, ut ei de remedio providere velimus in hac parte. Et quia prædict. W de P super præmissis coram vobis in banco pradicto allocutus ea cognovit ut dicitur. Vobis mandamus quod audita querela ipsius A super pramissis, vocatisa; cora vobis tam praf. W de B & W de P quam S de F auditisque binc inde corum rationibus, si per inquisitionem sic inde faciend. aut per recognitionem eorundem W, W & S vel corum alicujus vobis constare poterit, quod I tenementa predicta per collusionem predictam amisisset; ut est dictum, tunc tam super deceptionem & collusionem prædistam quam super recuperationem tenementi prædi Ai babend. iam pro nobis quam præfat. I justitiæ complementum fieri faciatis, prout de jure fuerit faciendum. Teste, &c.

If a Notary or other person of Covin counterfeit the K Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicar, ge, in the name of the Parson or Vicar of his Benefice he shall thereupon have a Writ of Disceit, and the Writ is in the Register. But whether by that he shall be restored unto his Benefice, Quart, it seemeth not, because the removing of him is a spiritual act.

If two feveral men come before the Mayor of the Staple, A or before other Mayor of a Town, and there one acknowledgeth unto the other of 100 l. in the name of another man, affirming him to be such a person, which in truth he is not: for which the other person is troubled, and sued upon the Statute, and taken in Execution, &c. he shall have a

Writ

100

Writ of Disceit against the two persons, &c. and shall reco-

ver damages against them.

And so if a man be bounden unto a Prior by a Statute-Merchant in 40 l. to be paid at a certain day, at which day he payeth the mony unto the Prior, &c. and afterwards another person in the Priors name, cause the Statute to be certified in the Chancery, and sue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the mony, shall have a Writ of Disceit against the Prior, and those who sued the Execution in his name.

If the Escheator, by virtue of a Writ directed to him, doth seize into the Kings hands the Lands of any person who holdeth of the King in Chief, by which the King commits the VVardship of those Lands unto another, who grants them over unto another during the Nonage of the Heir. Now if the under Escheator of his own authority return another Office without Enquest, &c. and disturbeth the possession of the second Grantee, the second Grantee shall have a Writ of Disceit against the under Escheator: And so if the Escheator, of his own authority have so done without taking any Enquest, &c. according to the course of the Law; and these Writs are in the Register.

And thereby it appeareth, that an Escheator may have an under Escheator, as well as the Sheriff may have an under

Sheriff.

D And also it appeareth, that an Escheator shall be punished, although he be an Officer of Record, if he return any Office, virtute Officii, which he hath not taken any Enquest to enquire of the same: and the Process in the Writ of Disceit is Attachment and Distringas.

### Writ de Parco fracio.

E A Writ of Parco fracto lieth where a man diffraineth Cattel for damage fesant, or for Rent, or Service, and put them into the Common Pound, or into another Pound or place, which shall be said to be a lawful Pound; and he who hath property in the Cattel, or other person taketh the Cattel out of the said Pound, and driveth them where he pleaseth: he who distraineth him for,&c. shall have the Writ de Parco fracto.

If a man sendeth his Servant to distrain for Rent or Services, and the Servant distraineth the Cattel, and impoundeth them, and a stranger taketh them out of the Pound, the Master shall have the Writ de Parco fracto, and not the Service.

vant, for it is the Masters Pound.

5 H.7.9. it is a man diffrain for Rent, or Services, or for damage fear, and put the Cattel in the Land or Close of a Friend well as if it with his License, and he who owneth the Cattel taketh them out of the said Close, he who distrained them, shall have the Writ de Parco fractio, and not he whose Close it is: for who oweth the Close, ought to have an Action, of Quare

clausum fregit,&c.for that it is not his Pound,but the Pound of him who distraineth the Cattel; and the form of the

Writ is:

Rex Vic' Lincoln. salutem. Si A,&c. tunc pone,&c. B ostens. F quare cum idem A in damno suo apud N quedam averia, vel sic, averia pradict. B cepisfet, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, idem B parcum illum vi & averia pradict. cepit & abduxit, et alia enormia ei intulit, ad grave damnum,&c.

And note, That this Writ is vi & armis, and he shall not shew in the Writ, what kind of Cattel they are, nor to whom the property of the Cattel doth appertain, if that

he please not so to do.

And if a man fend his Servant for to distrain for Rent, or G Services, or for damage fesant, then the form of the Writ

is fuch:

Ostens-quare cum idem A in damno suo apud N per B servient. Suum quendam bovem, vel, quædam averia capi fecisset, & idem B bovem illum, vel sic: averia illa secundum legem & consuetudinem regni nostri Angl. ibidem imparcasset, apud C parcum illud vi et armis fregit, &c. vel sic, pur. Abbe, ostens, quare cum idem Abbas in damno suo in suburbio Linc. per fratrem I custod. cell. nostræ sanetæ Mariæ Magdal. extra Lincoln. quædam averia, &c. Aliter pro des. ita in curia dom', &c. quare tum idem A in seod. suo apud N per servient. suum averia præd. B pro quadam desalta, quam idem B secit in cur. ejusdem A versus E in loquela quæ suit in eadem curia inter, &c. per considerationem curiæ prædict. capi secisset, et idem A averia illa secundum, &c. imparcasset prædict. B parcum, &c.

If a man do diffrain for Amercement in a Hundred, and Himpound the Cattel, and the other taketh them out, the

Writ shall be;

Quare cum idem A, per B & Challivos suos de hundred.de N, quedam jumenta ipsius F apud S infra præcititum hundred. præditt. pro quodam amerciamento, ad quod idem F amerciatus suit in eodem hundredo, ad opus prædits. A levand.capi fecisset, et idem B & Cjumenta, &c.

41 E.3.26. 47 E.3.13. 12 H.7.15.

And in this Writ he ought to shew, that the property of the Cattel were in him who was amerced, because he cannot distrain diffrain the Cattel of other men for this amercement: but for Rent or Service it is otherwife. For the party may diftrain the Cattel there levant and couchant upon the Lands.

If the Queen do diffrain for a debt or amercement due unto her, and impound the Cattel, and a stranger doth break the Pound, and take them out, then she shall have a Writ, and the Writ shall be such :

Rex Vic' S falutem. Pone per vad', &c. P de E, et C de D. quod fint, &c. ad respondendum tam nobis quam Annæ Reginæ Anglia, quare cum W de R ballious libertatis predict. Regina, hundred. de C in quo eadem Regina sicut in cæteris terris et tenementis suis fibi per nos concessis habet returnum omnium brevium nostrorum, prout ad ipsum W ratione officii sui pertinuit, virtute returni cujusdam brevis sibi pro te infra libertatem pred. fact. pro quodam debito ad opus predict. Regina de predict. P. per sum. scaccarii nostri levando, averia predict. P apud B cepiffet. et ea secundum legem et consustudinem regni nostri ibidem imparcasset, predict. P et C parcum illud vi et armis fregerunt, et

averia predict. ceperunt et abduxerunt, et alia enormia ibidem perpetraverunt in nostri contemptum, et ipsius Regina grave

damnum, et contra pacem nostram,&c.

And when the Queen fueth any Writ, the Writ shall not fay,&c. Si Anna Regina Angl. fecerit te fecur',&e. for fhe fhall 18 E. 3. 21. not find fureties as a Common person shall do, for she shall Litt. 133. not be amerced, as appeareth by the Writ before.

If the Husband do distrain for Rent or Services which he hath in right of his Wife, and a Stranger taketh them out of the Pound, the Husband shall have the Writ de Parco fracto in his own name: but yet it feemeth he may fue the fame in his name, and in the name of his Wife, and joyn the Wife with him, tamen quære.

### Writ of Rescous.

C THe Writ of Rescoussieth where a man doth distrain for Rent or Services, or for damage fefant, or would impeach or impound the Cattel, and the other party doth rescue them, or taketh them from him, then he shall have this Writ of Rescous; and the Writ is such:

Rex Vic',&c. Si A fecerit,&c. tunc pone,&c. oftenf. quare cum idem A in damno suo apud S quædam averia, vel sic: averia præd.B cepiffet, et ea ibidem fecundum legem et consuetudinem regni nostri Angliæ imparcari voluisset, prædict. B averia præd. vi et armis rescussit et alia, &c. vel fic: Quare cum idem A infeodo suo apud S, pro consuetud. et servic. sibi debitis per C fervient.

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fervient, suum quadam averia capi, vel sic: Quandam carectam ipsius B capi secisset. Et idem C carectam illam usque maneriü predict? A de S secundum, &c. ducere voluisset, predict. B carectam illam vi,&c. in ipsum C insultum secit, &c.

And so it appeareth he may joyn, in a Writ of Rescous,

the affault and battery of his Servant.

And if he do diftrain Cattel, and other dead Chattels, E.

then the Writ shall be;

Ostens, quare cum idem A in seodo suo apud S pro consuetudinibus & servitiis sibi debitis, averia & catalla predict B cepisset, & averia illa imparcasset, catalla predict, nomine districtionis secundum legem & consuetudinem regni nostri Anglizdetinere voluisset, idem C averia illa rescussit, & catalla pradcidem A abstulit, dalia, & c.

And if he do diffrain for a Rent-charge, the VVrit is

. fuch :

Quare, cum idem A in quodam tenemento ipsius B apud N, pro quodam annuo redditu per scriptum ipseus B obligatorium districtionis ipsius A obligato proredditu pred. à retro existent, quadam catalla ipsius B cepisset, & ea nomine districtionis secundum legem, &c. ibidem detineri voluisset, prad. B catalla praditi, &c.

And note, That if a man fend his Servant to distrain for F
Rent, or Service, or damage feasant, and Rescous be made
upon the Servant, the Master shall have the Writ of Rescous
and not the Servant: for the wrong is done unto him who
ought to have the Rent or Service, or is damnified,&c.

If a Collector or sub-Collector distrain for Fifteens, and Rescous be made, he shall have the Writ of Rescous, and

the Writ shall be such :

Si W de S subtaxator decime in villa de S nobis per cives G & burgens. regni nostri ultim. concesso, &c. seceritte, &c. tunc pone B,&c. ad respond. tam nobis quam præsat. VV, quare cum idem VV quædam catalla ipsus B pro certa pecuniæ summa ratione decim. predicti assessible, &c. catalla illa ibidem nomine districtionis nomine nostro detinere voluisset, predict. B tatalla illa præsat. VV ibidem insultum secit, & ipsum verberavit & vulneravit, &c. & alia, &c. in nostri contemptum & predictium, & pred. VV grave damnum contrapacem, &c. And is the Bayliss or Officers do arrest certain person.

and others refeue them from the Officers, then he who caufed them to be arrefted. shall have the Writ of Rescous, and the

Writ shall be such:

Quare cum idem Prior per chartam Domini E quam inspeximus, habere debeat apud VV liberam curiam suam de omnibus hominibus hominibus suis, tam burgens, quam aliis, do de omnibus placitis equerelis do attachiamentis qualitercunque contingent. una cum priss & omnibus aliis ad homines suos spectant. Ac idem Prior per B. ballivum suum apud F.R. & M.homines issus Prioris pro diversis transgress, apud T. insta libertatem prædict. Prioris per ipsos (ut dicit.) contra pacem nostram sactis, unde clamor & but sum ibidem levat. suerit, attachiari secisset, unde clamor spous suis sum ibidem secundum legem & consuetudinem detinere voluisset, sustici, in hac parte in Curia Prioris prædict. subitur. prædict. B. & L. præsat. R. & M. de prædict. transgress, non justicat. a custod. issius B.vi & armis ceperunt, & quo voluerunt, abire permiserunt, & alia enormia, & c. ad grave damnum ipsus Prioris, & libertatem sue l. eson. manifestam, & contra pacem nostram.

And note, That if the Bailiff, or Sheriff, or other Officer of the King, do arrest a man, or distrain him for debt, or other service due to the King, and Rescous is made, then the Bailiff or other Officer shall have the Writ of Rescous in his own

name and not the Kings, and the Writ shall be such:

Si T. ball. hundred. de F. fecerit, &c. tunc pone, &c. ad respondendum tam nobis quam præfat. ball. quare cum idem ball. juxta officii sui debit. W. quem per Vicecomitem nostrum Com. prædict, per brevenostrum de judicio sibi directum capi præceperimus apud K. virtute mandati nostri prædict. cepisset, & ipsum usqocatrum nostrum R. in prisona nostra ibidem moraturum ducere voluisset, prædict. R. & S. ipsum W. apud villam de K. vi & armis rescusserum, & alia, &c. in nostri contemptum, & prædict. ball. grave damnum, & contra pacem nostram, & habeas, &c.

And if the Bailiff would arrest any person, and he himself do rescue himself, and will not obey the arrest, then the Writ

fhall be fuch:

Si H. de R. ball. villa nostra de S. secerit, & c. tunc pone B. & c. quare cum idem H. juxta officii sui debitum prafat. B. pro quodam hutesio super ipsum per W. de S. apud C. levat. ad querimoniam pradict. W. secundum legem & consuetudinem regni nostri attachiasset, pradict. B. se justiciari non permittens attachiament. pradict. vi & armis secundum in splum H. ibidem insultum, & c.

And if the Sheriff fend unto the Bailiff of the Liberty to levy fines and amercements for the King, and the Bailiff diffrain certain Cattel, and the Rescous is made. Now the Lord of the liberty shall have the Writ of Rescous of the Rescous done to the Bailiff, and for the battery and assault made upon him, and for the loss of his Service, and all in one Writ.

If the Kings Bailiff do diffrain for Rent, and Rescous is made, the Bayliff shall have the Writ of Rescous, and not the

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King.

And

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And if a man fue forth an Execution, and hath Capias directed to the Sheriff to arrest the Party, and the Sheriff make his Warrant to the Bayliff of the Queens Liberty where the Party dwelleth, to arrest him, by which the Bayliff doth arrest him, and others do rescue him from the Bayliff, he who fued forth the Writ of Execution, shall have the Writ of Rescous against them that rescued him, as appeareth by the Register: but yet it seems reasonable that the Bayliff have a Writ of Rescous in such case: for some say the Bayliff shall be chargeable to him, who sued forth the Capias, &c.

and for the arrest, Tamen quære.

And it appeareth by the Register, That if a Writbe di- D rected unto the Sheriff, to levy the expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bayliff of the Liberty of the Bishop of Ely, to levy the fum affeffed; &c. for which the Bailiff by his under-bailiff doth take certain Cattel and would impound them, and other persons do rescue the Cattel and beat the under-bailiff, that the Bailiff shall have the Writ of Rescous against them; and there it feemeth that the Knights which should have the money, shall not have a Writ of Rescous for the same Rescous, because it is not a duty unto them by any person certain, but to be levied of the Inhabitants of the Towns.

And if the Lord do distrain his Tenants Cattel, and a F. strangers Cattel, for Rent or Service behind, when there is not any Rent or Service behind, the stranger may rescue his own Cattel, but not the Tenants, as it seemeth. And that as it seemeth by the Statute of Marlebridge cap. 3. which willeth, Non ideo puniatur Dominus per redemptionem, yet the opinion of Thorpe M. 31. E. 3. is contrary, for he faith, the ftranger may rescue as well the Tenants Cattel as his own. Quare.

re.Lit. cz. 9 H.7.4.

And Rescous is not, but where he hath the posletsion of F the Cattel, or the thing of which the Rescous is supposed to be made; For if a man come to arrest a man, or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action upon the Case.

And the King shall not have the Writ for a Rescous done G to his Officer, qd. ve. P. 20. E. 3. but he may cause him to

be indicted for the same.

### Audita Querela.

His Writ of Audita Querela lieth as well upon mat- H ter in fact, as upon matter in writing, as after appears. And this Writ shall be directed unto the Justices of

of lies quiatimet of on any rescution surd. 11+ 9 mg : f: 100:a:

the Common pleas or Kings bench, and lieth where A. and This is B. come before the Mayor, &c. and B. doth acknowledg the bright himself to be bounden in 100 l. to A. in the name of C. before the Mayor; and affirment his name is C. and afterwards C. is arrested by force of this Bond and Statute, and taken in Exe-gac price cution; Now C. shall have Audita Querela against A. and B. The and the form is such:

Rex Justiciariis suis de banco salutem. Querelam C. recepimus continent. quod A. & B. collusione inter eos apud W.prahabita, Cur. nostr.illuder. & præf. C. callide prægravare machinantes nuper coram C. Majore villa nostra Southampton, & R. Clerico ad recognitionem debit. apud S. accipiend. deputat. comparentes ipsum C. &c. C. sacramento corporali ad hoc præstit.exist.asseruerunt,per quod idem B. sub nomine ejusdem C. præf: A. 100 li. ad cert. terminum jam præterit. solvend. coram ejusdem Major. & Clerico, juxta formam statuti dudum apud Acton Burnel pro mercatoribus editi, se deber. recogn. & postmod. ipsum C. pro es quod ipse præd. 100 li. præf. A. ad terminum præd. non solvit, per præf. Majorem capi, & in prisona nostra salvo custodiri, quousq; eidem A. de eisdem 100 li. plen. satisfac. false & malitiose procurar. in ipfius C. damnum non medicum, & deceptionem Cur. nostræ manifestam: super quo idem C. nobis supplicavit, ut sibi remedium congruum adhiberi velimus: Vobis mandamus, quod auditis querelis ipsius C. in hac parte, & vocatis coram vobis præf. A. & B. ac præf. Majore & Clerico, auditisque binc inde partium ration. eidem C. Super falsitat. malitia, & decept.prad. plenam & celerem justitiam fieri fact. prout de jure, & fecund. conf. regni noftri fore videritis faciendum. Tefte, &c.

A If a man Lease Lands unto A. for life, and afterwards by fine grants the reversion unto B. in Fee, and dieth, and the heir of the Recognisor, and one L. by Covin betwixt them such a Pracips in Capite against the said A. supposing the Land to be holden of the King, whereas it is not holden of the King, but of another person: And in this Pracips in Capite they cause one F. to appear as Attorney for A. and to joyn the Miss in the said Writ; and afterwards the Attorny by Covindoth make default, for which Judgment is given against A. Now upon the same matter he shall have an Audita Quer. directed unto the Justices of the Common-pleas, commanding them to proceed as well for the restitution of the Land, as upon the Disceits, and to do speedy Justice, as of right according unto the custom of the Realm they ought to do. And the Writ is such:

Rex Justic. suis de banco salut. Monstravit nobis A. ut curs U 2 103.

ipfe nuper manerium de C. cum pertinen. in Com. L. ad terminum vitæ fuæ tenulffet ex dimissione I. ac H. fil. & her. prædict. I. manerium prædict. T.de S. & hæred.de corpor,ipfius T.exeuntibus (ut dic.)per finem inde in Cur.nostra coram Justic.nostris de banco apud W.levat.poft mortempræd.A.habend.conceffiffet,B.fi lius & bæres prædict. H. & L. collusion.inter eos præhabita, præfat. A. de prædict.manerio amover. Opræfat. T. de reverc.manerii prædict. excluder.machinantes breve nostrum (quod vocat. Præcipe in cap.) Vic.nostro Leicestr. ad certum diem jam praterit. retornabile de manerio prædict. ac si idem maner. de nobis teneret. in capite cum non teneat. sub nomine pred. E. versus pref. A. & T. in Cancellar. noftra impetrari, & brev. noftr. predict. quod pref. A. & T. juxta formam brevispræd. Sum fuerunt effendi coram vobis ad diem præd. per præf. Vic. retorn. ac quendam ignotum, qui se R. de S. nominari afferuit coram vobis in banco præd. apparer. ad perdendum vel lucrand. in loquela pred. per pref. A. & T. actornat. ipsis A. et T. de impetratione brevis sum. et attornato pr.ed. sub nomine suo ut permitti, facto penitus ignorantibus falso et malitiose procuraverunt, ac præf. attornat. ad eundem diem coram vobis comparens posuerit se in magnam affisam nostr. & petierit recognition, fieri, utrum lidem A. & T. majus jus habuer. tenend. dictum man. cumpertinen. ficut illud tenner. an præd. E. babend. diet. man. ficut illud petiit, per quod per defaltam quam iidem A. & T. postmod. fecerunt, in ead. Cur. per vos consideratum fuit ibid. quod præd. E. recuperaret feifinam fuam de præd. man. cum pertin. versus praf. A. & T. tenend. eidem E. & bared. suis quiete de præd. A. & T. & hered. fuis in perpetuum, cujus quidem considerationis prietextu pred. A. a man. suo præd. cum pertin. perpetue eft amotus, in ipfins A. damnum non modicum, & Cur. nostræ deceptionem manifestam, super quo præfatus A. nobis supplicavit congruum remedium sibi adhiberi. Nos hujusmodi collusionem, malitiam, & deceptionem, transire nolent. impunit. Vobis mandamus quod audit. querel. ipfins A. in bac parte, & vocat. coram vobis praf. E. dy L. L. et aliis in has parte, quos for. videritis vocandet auditis hincet indepartium rationibus, ulterius eid. A. tam super restitutione et recuperation. dictiman. quam super collusione, malitia & deceptione præd. plenam & celerem justic. fieri faciatis, prout de jure & secundum legem & conf. regni, &c. faciend . Tefte, &c.

And by this Writ it feemeth the Justices ought to make void the recovery, if they find the Disceit, &c. yet it seemeth

they may not to do.

If a man be bound in a Statute-Merchant, and after-B wards maketh a Feofment of parcel of his Lands unto ano-

ther

ther man, and of other parcel unto another, and the Re- 9 H.4.4.32. cognifee fueth execution upon the Statute, and hath Exe- E 3. Execut. cution against one Feoffee, that Feoffee shall have an Audita 127.45 E. 3. Querela against the other Feoffee, to shew cause why he Dy,337. 48 fhould not have Execution of his Lands, as of the Lands which E.3.522.& himself hath.

3 Eliz. Dy.

If a man be bounden in a Statute-Merchant, and certain 193, 194. Indentures of Defeasance are made of the said Statute, and Whaleys case. afterwards the Conusee doth arrest the Recognisor and imprisoneth him, and taketh the defeazance from him and then useth Execution upon the Statute, the Recognisor shall have an Audita Querela against him upon the whole matter. If at the Nisi prius in Trespassit be found for the Plaintiff, 40 Aff. 23.

5. 1 Br. Audit Quer. 16

and damages affeffed, and before the day in Bank the Plaintiff 44 Aff. 15. release unto the Defend. all Actions and Demands, and after- Holt. Br. wards prayeth Judgment, and fueth Execution thereupon, Audit Quethe Defend. upon that Release. Shall have an Audita Querela, rela.43.9 H.

36 H.6.24. 21 H.7.83. 3 H. 4. Br. Audita Querela 37 Fitz. Releaf. 53. Releafe of all actions is not sufficient matter to have Audita Quer.

And the Heir of the Recognisee may sue an Audita 48 E.3.5 15. Querela, if he have matter in writing to discharge the Exe- H.8.5. ve. 2. and 3. Eliz,

If a man be bound in a Statute-Merchant or Staple, and Dy.193. afterwards payeth the money according to the Statute, and Finchden. hath the Statute delivered unto him, and cancelleth the fame, and afterwards the Recognifee forgeth a new Statute in the name of the Recognifor, the Recognifor upon the Statute cancelled shall have an Audita Querela.

If a Statute-Merchant or Staple be made by one unto 43 E.3.27. another, and delivered into the hand of a stranger to deli- con. 12.1.4. ver upon Conditions performed, and the stranger doth 6.Calp.cont. deliver the Statute before the conditions performed, and the Conusee sueth Execution thereupon, the Recognisor shall have an Audita Querela.

If a man sucth forth an Execution upon a Statute, and 12 H.4.15. ha h Execution, and afterwards grant over his Estate, the and 16. Recognifor shall have an Audita Querela against the Grantee Frankford. without naming him who fued the Execution, if he have matter in writing for to fue, &c.

A man may fue an Audita Querela against the Recognisce, 41. E. 3. Aud because he hath purchased a Mannor unto which the Recog- quer. 18. nifee is a Vileyne regardant, and yet he may enter and feize the Recognifie without fuch fute.

U 3 And 46 E. 3.28. Fulthorp. 17 Aff. 24. had Error.

And a stranger who made not the Recognizance, nor was G Tenant of the Land at the time of fuing forth of the Execution, shall have an Audita Querela, if he have matter of Dis-Audit. quer. charge in Writing. Ve. 11. E. 3. Lit. Aff. and there it is faid 20. 10 E. 3, Charge in Writing Ve. 11. E. 3. Lit. Alj. and there it is laid.
25. Error 71 the same is given by the Statute. The Feoffee shall not have the Feoffee a Writ of Error, &c. Nor the Feoffee of the Conusor of part of the Lands shall not have an Audita Querela until his Lands be taken in Execution.

18 E. 3.36. Audit.quer. 9. the Conufor must shew the

48 E. 3.20.

21 E. 3.15.

Bil. Audit.

Quer. 18.

6 E.7. Eliz.

that the

Writ doth

he cometh

of full age.

15 E.4,5.

Brin.gc. 20 E. 3.

E.3.8.

13 E.3.2. 18

12 H.4.4.

If a man fueth Audita Querela against the Conusee, and H sheweth a Statute cancelled; and faith the same was delivered to him in lieu of Acquittance, the Recognifee may fhew the true Statute, and shew that the Statute shewed which was can-Stat. other- celled, was a forged Statute, & thereupon he shall have a Writ wife he shall unto the Justices in the nature of Audita Quer. commanding not have the them that they fend for the Mayor and the Clark, & for the parties, and for to do right; and the Examination of the Mayor and Clark shall try and end the matter, quod ve M.I I.E.I.

Upon a Recovery of a Debt, if he fue a Scire Facias, and the Sheriff retorn nihil, by which an Executionis awarded, I the Defendant shall have Audita Querela, if he have a Release per Hungerf. or Acquittance, because he was not warned: But if the Sheriff hath returned him warned, he shall not have Audita Querela upon such Release, &c. because he might have pleaded the

same upon the return of the Scire Facias.

And if an Infant bind himself in a Statute Merchant or Dy.232. rule Staple, he shall have an Audita Querela, during his Nonage to K avoid that Statute; and afterwards he shall have an Audita no: lie after Querela after his full age to avoid that Statute upon that matter in Fact. 12 mfra 1 232:

And so if a man make a Statute-Merchant or Staple by duress, he shall have an Andita Querela to avoid that Statute L

by this imprisonment.

If two be feverally bounden in two feveral Statutes, and afterwards the Recognifee by deed doth release both the M Aud.quer.27 Statutes to one of them, if he fue Execution against them se-20 E.3. Aud. verally, they shall joyn in Audita Querela upon that Release.

If the Recognifor enfeoffee a stranger of parcel of the Land, & afterwards enfeoffeth the Recognifee of another par- N cel of the Lands, and afterwards the Recognifee fueth Execution against the Recognisor and the Feoffee; The Feoffee shall have an Audita Querela against the Recognisee, and discharge his Lands, because that the Recognisee hath discharged his parcel of Land which he purchased by his own Act.

Upon an Audita Querela sued, he shall have a Supersedeas o in the same Writ to stay Execution, &c. But if he be A contra Coke 11+ gout: + 3000:6: 90 00:

querela 28. . 25 H. S.Br. Aud.quer.

39.

24 E. 3.24. Br. Audit. ouer.22. E IL S. I.

Nonfuit, he may have a new Audita Querela, but then he shall not have a Supersedens to stay Execution.

And a man shall not have an Audita Querela, supposing the Recognifee will sue Execution, but it ought to be alledged in the Writ, that he hath in fasto sued Execution.

If a man sue Audita Querela upon a Release, and afterwards 43 E 3.28. is Nontuit, he shall not have an Audita Querela upon new Thorp. matter, ut dicitur, 43 E 3.3 But it seemeth the Law is otherwise, 24 E 3. Aubut he shall not delay Execution by a new Audita Querela.

R If a man doth comprehend two matters in the Audita que-44 E. 3.36. rela to extinguish the Execution, yet the Writ is good, but 24 E. 3.27. the Plaint shall hold himself to one matter, and the Defend. Br. Audita shall answer to that And variance betwixt the Audita querela, querela. 24. and the Record shall abate the Writ. But there in a new Audita querela such according to the Record, he shall have a Supersedeas to stay Execution, &c. although he had before a Supersedeas in the other Audita querela, which was abated.

If a man fue Execution upon a Statute Merchant and Ve22.H.6. hatha Capias returned in the Common Pleas, If the Feoffees 56. or parties will fue an Audita querela; they ought to fue the fame out of the Chancery, directed unto the Justices of the Common Pleas.

R If a man fue an Execution upon a Statute merchant as 2 R. 3.8.

Executor unto another; the party shall not have an Audita con if the tequerela, supposing in the Writ that he who hath such Execution is not Executor.

And the process in Audita querela is Venire facias and Di-Audit. querela is Venire facias and Di-Hudit. querela is Venire facias and Pluries Distring. and if he return Nihil, rela 41° or Non est inventus, he shall have a Capias against the De-48 E.3.1: he shall not he shall not

A A man recovereth by default in an Action of Wast, the but start Defendant such an Audita querela, directed unto the Justices alian, out of the Chancery, surmising in the Writ, that he was not summoned, nor attached, nor distrained; For which the Justices grant out of the Rolls in the Common Pleas, a Writ 12 H.4.6. of Disceit against the Audita querela which was but a com- and 15. mandment to the Justices to do right unto the party, &c. Trin.

19. E. 3. And yet they shall proceed upon the Writ of Disceit, and not upon the Audita querela.

Pleas, and afterwards doth release unto the party, and then against his Release such the Execution; Then he shall there come into the Common Pleas, and shall such an Audita que 22 H.6.56 rela thereupen out of the Rolls. And so if one recover in the Common Pleas or Kings Bench, debt or damages, and

11 1

atterwards

afterwards by his deed releafeth the fame, and afterwards fueth forth Execution upon the Recovery, the party to whom he releafed shall have Audita querela, out of the Common Pleas or Kings Bench where the Record is, and yet he may have an Audita querela out of the Chancery, and so it shall be fornetimes Judicial, and sometimes Original.

46 F.33. 48 B.3.12. 47 E.3.5.

47 E.3.25.

And if a man be bounden in a Statute Merchant or Staple C unto another man, and afterwards the Recognifee make a defeafance unto the Recognifor; now if the Recognifee fue execution upon the Statute against the form of the Indentures, the Recognifor (or his Executors if he be dead) may have an Audita querela against the Recognifee.

And it appeareth in the Register, That a Writ of Audita D querela lieth for an Infant who hath entred a Statute Merchant or a Statute Staple during his nonage, if he be yet within

200

And another Audit a querela appeareth in the Register for E the Feosfee, of parcel of the Land which belonged to the Recognifor against the Recognifee, because that the Recognifee hath purchased other parcel of the Lands of the Re-

cognifor, &c.

If a man be arrefied and imprisoned upon a Statute Mer-F chant, and afterwards the Recognifee doth release unto the Recognifor, or he pay the debt, and hath acquittance, or pay parcel, and hath a release for the residue; Then they may come into the Chancery, and there find surety, body for body to be in the Chancery at a certain day, and there to pay the money, &c. if he cannot discharge himself by acquittance or release, and thereupon he shall have a Writ unto the Sheriff where he is in ward, rehearsing how he hath sound sureties in the Chancery, commanding him for to deliver him is the keep him in prison for that cause, and for no other cause, and upon that he may have an Alias and a Pluries and attachment against the Sheriff is the will not deliver him, &c.

Eut if a man be arrefled and imprisoned upon a Statute staple, and he hath acquittance or release to discharge himfelf, then if he will sue Audita querela, or a Scire facias to avoid the Execution of, that Statute, he ought for to give furety as well to the party, as unto the King in the Chancery, severally in a certain sum, &c. to sue with effect, and to render his body, or pay the money, &c. otherwise he shall not be delivered out of prison: and the same is by sorce of

the Statute of II H. 6. cap 10.

1

## Writ of Attaint.

THE Writ of Attaint lieth where falle Verdict is given ve. 4 Ma.T. in a Court of Record against the Plaintiff, or Defendant, Br. Attaint or against the Demandant or Tenant in a plea real or per- 127, it lieth fonal sued by Writ or by Bill, if the debt or damages do ex- not upon an ceed 40 s. Then he against whom the Verdict passed shall informat. have a Writ of Attaint, and the Writ shall be such: if it be 40 E.3.31.

in an Action of Trespass in the Kings Bench.

Si E. de L. fec. te fecur. &c. tunc summon. &c. 24. legal. milites de vifn. de N. quod fint coram nobis apud B. in octabis S.Hill. parati facrament.recognosc.si jurator.per quos quadam inquisitio nuper capta fuit, coram nobis apud B. per breve nostrum inter I. et M. ux.ejus et pr.ed. S. de quodam transgressione eidem M. per præf.K.illata,ut dicit falfum fec.facram.ficut idem S.nobis gravit.conquerend.monstrav',et interim.diligen.inquiras,qui fuer. juratores prime inquisitionis, &c. et eos tunchabeas coram pref.

Julic. &c. vel coram nobis, &c. as the case is and lieth. And by the Statute of west. 1. cap. 38. a man shall have an Attaint in a plea of Land of Freehold, of a thing which touch-

eth the Freehold.

And by the Stat. of 1 E. 3. cap. 6. a man shall have Atraint

in Trespass.

And by the Stat. of 5 E. 3. cap. 6. in the end of the Statute 14 H.7.14. a man shall have Attaint of Trespass sued by Bill without Brian. Writ before Justices of Record, if the damages exceed forty s.

And also a man shall have Attaint for the damages, al- 14 H.7 14. though they be not paid, &c.

N And if false Verdict pass by Writ of Niss prius, then the form of the Writ is:

Parati facramento recognosc. si jurat. per quos quædam inquisitio nuper summon fuit coram nobis, et capta coram dilect. et fidel. nostr. T. de B. uno Jutic. nostrum ad placit. coram nobis tenenda assign. per breve nostrum de Nisi prius apud. K. inter ipsum E. et præf. T. de quadam transgr. &c.

And if the Verdict be taken within any Liberty or Cor. 44 E.3.21. 44 Aff. Br. Attaint 113

porate Town, then the Writ of Attaint is fuch:

Parati sacramento recognosc. si juratores per quos que laminquifitio nuper sum. fuit, et capta apud L. fine brevi nostre coram Majore et Ball. Civitat. noftre Lincoln. de loquela que fuit coram dilectis et fidel.nostris S.Scrop.et fociis suis Justic.nostris ad placita coram nobis tenend.a fign.inter I.de Let præf. S. de quadam transgreidem I.per præf. S. illatum,ut dicitur,que quidem loqueta juxta libertates civitatis civibus civitat. noftræ præd.per chartas progenitorum nostrorum quondam regum Anglet confirmac. nostram concessas, coram eisdem Majore et Ball. nostri retorn. suit placitum, falsum secer. sacramentum, sicut idem I. nobis graviter conquerendo monstravit necne, & interim, &c.

And upon false verdict given in London upon Niss prius, the A

form of the Writ is fuch :

Parati sacramento recogn si jurat. per quos quedam inquisitio nuper sum suit coram nobis, & capt.coram R.de M.tunc uno Justic. ad placita cor.nobis tenend.assign.associato sibi A. de F. apud S. Martin.Lond.juxta libertat.civitatis præd.per breve nostr. &c.

If false verdict be given in a Corporate Town, upon a plaint

without Writ, then it is such:

Parati sacramento recogn, si jurat, per quos quædam inquisitio nuper capta suit cor am nobis apud Linc, sine brevi nostro inter A. de D. de quadam transgressione, &c. illata, de qua quidem transgressione idem B. convict, suit, & 20 l. eidem A. pro damnis suis in hac parte adjudicat existent ut dicit, salsum secer, sacrament, sicui idem A. &c.

And if false verdict be given within the verge, then the C

Writ shall be such:

Parati sacramento recogn, si jurat.per quos quædam inquisitio nuper capta suit coram Senesc. & Maresc. hospitii nostri apud G. sine brevi nostro inter K.& prædict. T. de quadamtransgressione eidem R. per præs. T. apud C. insra virgam nostram ut dicebat. illata, falsum secer. sacramentum, &c.

And if a man be condemned by false verdict in debt, or D damages, then if he sue an attaint, he shall have a special Writ unto the Justices, to bail him upon sureties taken, that if the attaint pass against him, he render himself to pri-

fon, or fatisfie the debt, and the Writ is fuch:

Rex dilect.&c.E.de S. & fociis fuis falut'. Cum I. arrainaverit cor.nobis per breve nostr. quandam jurat. 24.ad convincend. jurator. per quos quædam inquisitio nuper capta fuit cor.nobis apud W.per breve noftr.inter R.et pr.ed.I.de quadam transgr.&c.illat.ut dicit. ac ex parte ipfius I.accepim.quod ipfe prætextu processus in præd. placito de transgr.facti, captus est, & in prisona Marescalcia nostra cor. nobis detentus, quo minus jurat. suam præd. profequi possit, super quo,&c.adhiberi, Nas volentes quod idem I.in prisona nostra præd. fic detineat. quo minus jurat. suam præd.proseg. valeat,ut debebit: Vobis mandamus, quod idem I.invenerit cor. vobis suffic.manucapt. qui eum manucapiant habere cor. nobis ad prosequend. attinctam præd. & terminata attincta illa, si cont.ipsum transierit, velipse attinctam illam non fuerit prosecutus, quod reddat se prisone nostræ prædict. & satist.tam nobis de eo quod ad nos, quam praf. R. de eo quod ad ipsum pertinet in pramissis, & ulterius faciat

Jaciat & recipiat quod Curia consideraverit in hac parte, tunc ipsum I. a prisona nostra prædict. deliberari fac. per manucapt. bujusmodi, ad prosequendum attinct. supradict.

And if a man vouch in a Pracipe quod reddat one who en- 8 H.4.4. treth into the warrants and pleadeth, and loseth by false Ver- 11 H.4.51; dict, he shall have an attaint, and the Writ shall make mention Skren. 34 H. of the voucher; And so if a man pray to be received for de. 6.31. fault of Tenant for life, and is received and pleadeth and Gascoigne. loseth by false Verdict, he shall have a Writ of attaint, and 17 E.2.recothe Writ shall mention the receipt.

And so if it pass against the Plaintiff by false Verdict, and lue 32.9 H. he bring an attaint, the Writ shall make mention of the 6.38. Voucher, and of the Receipt; And so if he in the reversion Yet he shall joyn unto the Tenant for life by Aid prayer, and they lofe, not mention by which he in the reversion brings an attaint, he shall make if the Temention in the Writ of the Aid prayer; and also in Assie, be dead. if it be discontinued and afterwards reattachment sued, and 4 41.7. he loseth by false Verdict, the Writ of attaint shall make men- 4 E. 3.54. tion of the re-attachment, because he reviveth the Original of Br. Attaint Affife.

But if the Defendant in a Writ of Detinue pray garnishment, who comethand pleads, and the Plaintiff lofeth, by which he bringeth attaint against the Garnishee, the Writof attaint shall make mention of the Garnishment. That is well 9 H.6.38. debated, M.9.H.6. in the title Attaint in the Abridgments.

But, faving the opinion of the Book, it seemeth the Writ of attaint shall make mention of the Garnishment, &: for the Defendant in a Writ of Detinue who sueth the Garnishment, is in manner out of Court; and when the Garnishee comes, the Plaintiff counteth upon his original Writ, which is the Writ of Detinue, and the Garnishee shall answer to that Count; and the Writ of Garnishment is but for to make him come in and answer to the Plaintiff to his original and Count, and when he comes and pleads, he pleads unto the Plaintiffs Count, which is upon the Original by which the plea which is between the Plaintiff and the Garnishee is upon the Original plea, as it seemeth, tamen quare.

And if a man plead a deed in bar, in which there are wir- [107] neffes, and the deed is denied, for which process is awarded 11 Aff. 19. against the witnesses, which joyn with the Jury, and it is found Br. Attaint the Plaint. deed, Now he shall not have an attaint, &c. because 57.23.4 J. the witnesses do affirm the Verdict by their testimonies. But if 11. it be found not his deed, then the other party shall have an Challenge artaint, for the witnesses cannot prove a negative, but of the 11 E.3. Ataffirmative they may have notice whether it be his deed or not. taint. 16. 40.

very in va-

10E. 4.17.

24 H.S.Br.

Attaint 96.

3 c H.6.30.

12 E.4,5.

13 E.4.2.

14 H.7.5.

9 H. 6. 2.

3 H.6.29.

of Error. 18 H.S.T.

42 E. 3.26.

A man shall have an attaint in special Case, where every word of the Verdict is true, as if a man hath had common appendant unto his land, time out of mind, and he bring an Affife of the common, and makes title that he hath had common, 10 E. 4.17. time out of mind,&c. without speaking of the Appendancy, ac. Co. 291. and it is found for him; the Defendant shall have an attaint, for the Plaintiffs title is for common in groß, and not common appendant; and yet the words of the Verdict are true, that he hath had common time out of mind, &c. but not in fuch

manner as shall be taken by the title.

And so if a man have a Rent as Forrester in fee of such a A Forrest time out of mind, and in Assise of that Rent he make title thereunto, that he hath had a Rent out of that Land time out of mind, &c. without faving as Forrester in fee, &c. and it be found for him, the other party shall have an attaint upon that Verdict, although the words of the Verdict be true, for he hath not had such Rent by prescription as shall be intended and taken by his title.

If a man recover outragious damages by Verdict, but he B releaseth parcel of the damages before Judgment, and hath Judgment for the residue, the Desendant shall not have an

attaint for those damages which are released.

And in a Writ of Wast the Plaintiff shall have a Writ to C enquire of the Wast, who if they give false verdict by which Martin ac. 48 E. 3.19. the Plaintiff recovereth, the Defendant shall have an attaint cont. 33 H.6. per Curiam, M. 2. H. 4. But I do not fee how the same can be warranted by any Statute, which giveth the attaint, because Curian, f) the Writ of Enquiry is awarded by the Court ex officio per Sacramentum proborum, &c. And the Sheriff may make the enquiry by the oaths of fix or eight persons of the Wast, and he 21 H. 6. 56. is not bound to take twelve persons. Quere of this.

as.H.3.5.10. 38 E. 3.12. and 27 Br. Collusion 18. upon Writ of enquiry of Wast for an Abbot Q ale jus shall iffue, which proves it is no Verdict but an Enquiry.

> The King shall have an attaint upon a false verdict passed of against him, as well as a common person.

In trefpass against two, one cometh and pleadeth Not guil- F. 34 H.6.32. ty, and is found guilty, and afterwards the other cometh and 12 H.4.5. In plead th non guilty, and is found guilty by another Enquest; wast against Now in this case the first Jury shall assessall the damages for two, one the Trespassand that the Defendant in the last Enquest shall made default, and the have an attaint of the damages affefied by the first Enquest other plead- if they be outragious or excessive, &c.

ed he who made default fhall not have Attaint. 44 E 3.36. 34 H.6.12. Morle cont, 39 H.6.1 ac. 8 H.4.23. Tirmit.

Tenant

1

Tenant by Statute Merchant shall have an attaint if he be 21 Aff. 16. barred in Affize by false verdict, or found against him by Br. Attaint false verdict, where he is Defendant in the Assize.

If a man recover in a Pracipe quod reddat, against a Tenant 34 H.6.13. by falle verdict, there have been divers opinions whether scin perfoby false verdict, there have been divers opinions whether nal Actions the Tenant shall have an attaint before Execution sued out 21 H. 6.54. against him. Ve. 41. E. 3. Lib. Aff. 21. h. 6. 60. But the Statute of 1 E. 3. faith, That a man shall have an attaint of · damages before Execution fued of them, before which Statute it seemeth he could not have attaint of them. But in the time of E. 1. the Defendant fued forth an attaint for damages upon false verdict given against him in a Writ of Trespass 34 H.6.13. before the Plaintiff fued Execution of the damages, which fee in title Attaint in the Abridgments, temp. E. 1. And also by 26 H.S.z. the same reason, if a man do recover Land, the Tenant shall 31 H.6.12. the fame reason, if a man do recover Land, the Tenate man 35 H.6.39. not have attaint before Execution. And Nontenure hath been 22 E.3.10. pleaded, and admitted a good plea divers times in an attaint. Br. Attains And on the other fide if the Tenant shall not have an attaint 32. before Execution fued, or entry made by the Demandant or his heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without remedy by attainr.

If a man who was Tenant do recover in attaint, the Judg- 5 AF 24 E ment shall be that he shall be restored, &c. which could not Attaint 48. be if the Demandant hath not entred, and when he himself 6. Aff. ib. Br.

is Tenant in policifion.

And I think it the better opinion, That if in Trespass the Defendant plead villainage in the Plaintiff, &c. and he is found frank unto his damages of 20 s. the Defendant shall not have an attaint for the smallness of the damages, &c. Eut in a Precipe quod reddat, if the Tenant plead Non-tenure, and it be found against him, he shall have an attaint, &c.

An Attaint shall be maintainable against the Terre-Tenant Attaint. 59. wirhout naming him who was party to the Record: Other 10 F.4.13. wife it is in a Writ of Recordare: for that shall be fued against & h. 4.18. him who was party, or his Heir or Executor, if it be a personal 9 H. 6.47-Action, otherwise it shall abate.

Attaint doth not lie upon false Verdict given in an Appeal 35 H.6.30.

of Maihem, or Appeal of Felony or Murder.

An Attaint may be fued in the Common Pleas, if the 34 H.6.36. Record be there; or it may be fued in the Kings Eench upon 35 H.6.30. a falle Verdict given in the Common Pleas, if the Record be the contr. is removed into the Kings Bench.

A Recovery was in an Affile brought in the Kings Bench & 8 Eliz. Dy. afterwards that Record was fent unto the Common Pleas, 16 Aff. 4 Br.

and Attaint 69.

14 Aff. 2.Br.

44 E.3.2. 44 Aff.20. 21 E.3:10. Br. Art. 32. 21 E. 3.3. ibid.s I.

H.15.h.3. 21 E. Dy. 364.

3 H.4.4. 16 E. 3.

Error 72.

20 E.3.

Error 2.

21 H.6.29.

8 H.4.13:

Skyene.

and the party fued an Attaint upon the Record in the Common Pleas, Ve. 8. E. 2. H. Affife. Item Kan.

Attaint was fued upon a false Verdict given against the Defendant when he claimed liberty, and adjudged that he should have it. H. 15. h. 3,

And the Writ of Attaint may be fued out of the Com- O mon Pleas or Kings Bench, upon a false Verdict given in the fame Court, as well as out of the Chancery, qd. ve. 30. E. I. Init. Carnub.

In a Writ of Entry brought in Suffex, the Defendant P pleaded a Release in London, which was found against him in London, for which he brought an Attaint in London, and

it was maintainable, qd.ve. M. 18.E.I.

If the King recover by false Verdict, he shall have At-Q' taint against the Petit Jury only, as if the King do recover by erroneous process, &c. the party shall have a Writ of Error of the Judgment, and shall not name the King, because

he is always present in the Court.

The Vouchee or Tenant by Resceit, or he in the Rever- A fion where he joyneth to the Tenant by Aid proxe, shall have attaint if he lose by false Verdict: and if Tenant for life lose by false Judgment, he in the Reversion shall have anattaint or Writ of Error living the Tenant for life, by the Statute of 9. R. 2. cap. 3.

If the Defendant in Trespas, plead Villenage in the Plain- B tiff, and he faith that he is Frank, and is so found by Verdict, and afterwards the Defendant dieth, his Heir shall have an attaint to avoid this Estoppel and false Verdict, although it was

given in a personal action.

In an attaint upon a recovery in a Pracipe quod reddat, the C Defendant pleads Nontenure, and the Demandant faith, That he made a Feofment unto unknown persons, &c. and that he brought the Action within the year, and with that that he will aver that the Defendants took the profits the day of the Writ purchased; and the Defendant saith, That he did not take the profits, &c. Now this issue shall be tried by the attaint; and if they give false Oaths, he shall have an attaint 32. A shall be upon that Verdict by Newton, as if in a Writ of Right the Tenant plead a Collateral warranty, made within the same Countwelve, and ty, it shall be tried by the Grand Affise; and if they give false Verdict, he shall have an attaint, because the same is out of the point of Athle by Newton Tr. 21.h.6.

Nonfuit in attaint after appearance is peremptory, and D he shall not have a new attaint, and so upon a Retraxit, if the Demandant say he will no more sue his attaint, and that

21 E.3:10. tried by not by the

21 H.6.55.

Attaint. 19 Aff.13: Br. Attaint 63.32 Aff. 13.Br.Attaint 75.

that he entred upon Record, he shall not after have another attaint.

E If a man have a Precipe quod reddat against divers, by several Precipe's, and by Enquest it is sound for the Demandant, 14 Ass. Br: he shall have a Writ of attaint against the Tenant, &c. But if Attaint 59. it is sound against the Tenants; he shall have several attaints, for as unto all of them, it is as a several Enquest to try their issues severally.

If the Demandant be barred in a Formedon and afterwards releaseth all actions, or all his right in the Land, yet his Heir

shall have a Writ of attaint.

And so if the Father be Nonsuit upon an attaint upon a

Writ of Formedon, he there shall have an attaint.

H And a man shall have an attaint before Justices of Oyer without original Writ, upon a Bill only sued before the same Justices, T. 5. E. 2.

If falle Verdict be given in Assize of Novel distaten if the Plaintiff will sue an attaint, he ought to have such a Writ:

Rex vic. Lincoln. salutem. Si A. fecerit te securum tunc sum. &c. 24. milites de visn. de S. quod sint coram Justiciar. nostris ad primam Assisam, cum in partes illas venerint. Vel fic, coram dilectis & fidelibus noftris R. de W. & B. de F. & his quos sibi associavimus ad certis, &c. quos idem R. & B. tibi scire fac.parati sacramento recogn. si I.injuste & sine judicio diffeisivit præfat. A. de libero tenemento suo in S.vel de communia palturæ suæ in S. que pertinet ad liberum tenementum suum in eadem villa, post primam transfretationem Domini H, filii Regis I. in Vascon.unde idem A. queritur quod juratores Assisa Nova diff. que inter eos sum. fuit & capta coram nobis apud W. per breve nostrum, vel coram præfat. R. & B. vel coram dilect. & fidelibus nostris W. de H. & sociis suis justiciar. nostris ultim. itinerant. apud L.in com.tuo per breve nostrum falsum fecer.sacramentum, & interim diligenter inquiras, qui fuer. Furator illus aff. & eos tunc habeas coram praf. Justic.ad prafat. aff. vel coram R. & B. Et Sum. &c. prad. I.vel fic : prad. I.H. qui predict. tenementa nunc tenet: quod tunc sit ibi auditur. illam recognitionem. & habeas ibi nomina Militum, & hoc breve.

And if a manlose by false Verdict in Assize before Justices of Assize, if he will sue an attaint before the same Justices, he ought to sue a Patent directed unto the same Justices to give them authority to hold Plea thereof; or he may sue a Patent unto other Justices to hold Plea of that Writ of at-

taint, and the form of the Patent is fuch :

L Rex dilectis & fidelibus suis R. & B. salutem. Sciatis quod constituimus vos, &c. Justic nostros, una cum his, quos vohie vobis associavimus ad jurat. XXIV. Milit. capiend. quam A. arraîn. coram vobis per breve nostrum versus I. ad convincend. Jurator. in Association disserting and inter eos sum. fuit, et capta coram vobis apud W. per breve nostrum de tenementis in S. vel de communi pastur. in S. vel sic: coram vobis presat. R. et dilecto et stellinostros. nuper Justic. nostris, &cc. apud W. per breve nostrum de tenementis in S. ei ideo vobis mandamus, quod ad certos, &cc. provideritis, jurat. illam capiatis, factur. inde quod ad justitiam pertinet secundum legem et consutudinem regni nostri: Salvis nobis amerciamentis inde provenient. Mandamus enimvic. nostro Lincoln. quod ad certos diem et locum, quos ei scire fac. jurat. illam coram vobis venire fac. In cujus rei testimonium has literas nostras sieri secimus patentes. Teste, &cc.

And a man shall have a Writ of Attaint upon a false Verdict in an Assise of Nusance. Quare levavit vel prostravit quoddam stagnum in N. &c. vel quoddam sossatum, vel quandam sepem, vel divertit cursum aqua in N. ad nocumentum &c. in

eadem villa. And the form of the Writ is such :

[109] Si A. &c. tunc sum. &c. parati sacramento recognoscere, si I. injuste et sine judicio levavit, vel prostravit quoddam stagnum in N. vel quoddam soffatum, vel quandam sepem, vel divertit cursum cujusdam aque in N. vel archavit, vel obstruxit quandam viam in N. ad nocumentum, &c. in eadem villa, post primam, &c. unde idem A. queritur, quod juratores ass. que inter eos sum. suit et capta coram, &c. apud N. per breve nostrum salsum, &c. et interim, &c. et sum. &c. et labeas, &c.

And it is a Rule in the Register, That in an Attaint upon an Affize of Novel dist. a certain day shall be set, as in an Affize, Dielune velalio die in Crassin, vel in Octab. vel in quinden. Pasch. but it behoveth that the Tenant have Garnish out by 15 days in the Attaint, for the Statute doth not give

leffer time, but only in Affize before the King.

And there is another form of the Writ, if the Affize adjourned into the Common Pleas, and taken there before the Justices of the Common Pleas, and the same appeareth in the

Register.

And another form is of the Writ of Attaint, where the Affize is brought against the husband and wife, and the wife is received for the default of the Husband, and pleadeth and

loseth by false Verdict.

And another form of attaint is, where the Tenant in the Affize pleadeth the Release of the Plaintiff, or of his ancestor in bar of the Affize which is found against them, upon a false Verdict.

And another Form of the Writ of attaint is, where

the

the Verdict passeth by Niss prius out of the Common Pleas. And another Form of the Writ of attaint is, where the Affize is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.

And another form of the Writ is, If an Affize be fummoned before divers Justices, and afterwards is taken by any of them by vertue of the Writ of Si non omnes, then the Party shall have a Writ of attaint, rehearfing the whole matter.

And if a man upon Verdict given in an Affize before the Justices of Affise sueth an attaint before the same Justices, or other Justices, he may have a Writ of affociation directed unto the same Justices before whom the attaint is laid; and the Writ of Si non omnes, as he shall have in Affize, &c. who was Plaintiff there: and he shall have a Writ Patent directed unto him who is affociate, &c. which Writs do appear in the Register after the Writs of Assize of Novel disseisin.

e Register after the Writs of Anize of Novel anishin.

But appeareth by one writ in the Register, that there Br. Attaint was a Constitution made, which required, That the Assize 31. and Jurors and Certificate shall be taken before the Justices 21 Aff. 7.Br. commonly affigned: By which it feemeth, That a man shall Certificat de not have an Attaint upon a falle Verdict given in an affize, Affis 8. but before the Justices of affize, or before the Justices of the Br. Art. 32.

Common Pleas, if the Record be removed thither, or before 80 H.6.4. the Justices of the Kings Bench, if the Record be removed No Attaint before the King; and the form of the Writ is fuch:

Rex dilect. & fidel. suis F. & G. de E. salutem. Licet nuper remrecordi, constituerimus vos Justic.nostros ad jurat.viginti & quatuor Mi- but upon the lit.capiend.quamI.quafuit uxor E.arrain.cor.vobis per breve noftr. Record it versus E.que fuit uxor A.de L.ad convincend.jurator. Aff. no. diff. que inter ipsum A. & pref.I. & alios, & c. sum. fuit & capta apud L. cor-dilectis & fidelibus nostris R. & B.nup. Justic.nostris apud aff. & c.assign.per brev.nostr.de tenement.in S. Quia ea constitutio præa. facta fuit cont. form. statuti nostri apud Northampt. nuper editi, in quo continetur, qd.affife jurate, & certificationes cor. Juftic. communiter assign. & non aliis capiantur: Quod quidem statutum in omnibus & fingulis suis articulis volent. inviolabiliter observari, Vobis mandamus, quod de captione, jurate præd.prætextu commiff. noftræ fit fact.vos nullatenus intromittatis. Tefte, &c. Quod quidem statut. fact. fuit anno 2 Ed. 3. Regis Angl. cap. 2.

By which it appeareth, That he shall not have a writ of attaint by Commillion, &c. before other Justices, but only before Justices of affize, or of the Common Pleas, or Kings

Bench, as before is faid.

The form of the Writ of Attaint upon a Redist. is such:

upon Tene-

Ve 8 Eliz.

Dy.25.

Rex Vic',&c. Si R fecerit, &c. tune fum.&c. 24 legal. Milites,&c. ufque ibi parati, &c. Si juratores per quos quadam inquisitio capta fuit coram E tunc Vic. com tui, & custod. placitorum coron e noftr. ejufdem per breve noftrum apud W inter R, & prad. B de quadam rediffeidem R per praf. B fact. ut dicit. de uno mesuagio, o 9 acriterra cum pertin. in W falsum fecerut facramentum ficut idem R nobis gravit. querend.monstravit, & interim diligenter inquiras, qui fuerint juratores illius inquisitionis,&c. & eos tunc habeas coram præf.R & I.Et sum. præd. B, quod tunc sit ibi ad audiend.ill.recogn. & habeas ibi sum. &c.

And It seemeth, That this Writ of Attaint ought to be fued before the Justices of affize of the said County, and that they shall have a Patent for the same directed unto them, and that the Record shall be brought before them. But if the Record be removed into the Common Pleas, then

it feemeth he shall have his attaint there.

And it appeareth by Glanvile, That a man shall have an K attaint, and the manner how the Jurors shall be punished.

And if any Jurors be convict of false Oath, they shall be L imprisoned, and then they ought to sue unto the King to 42 E.3. 25. pay a fine for their imprisonment, and when they are agreed with the King, they may fue a writ for to remove the Record before the King in the Kings Bench, and the Writ shall be

By this appeareth that fuch :

8 H.4.23.

Gafcogne.

they shall not forfeit their Lands in Fee, as upon a Premunire, but for their own lives by Br. Attaint 100, & 95. upon the book of 22 E.4.1.

> Rex dilectis E & sociis suis, &c. salutem. Cum W de M & alii de falso sacramento per ipsos facto in quadam inquisitione capta apud W coram W' de B & sociis suis nuper Justic. Dom. Regis, &c. de Banco per breve nostrum inter R peten. & W de M tenent. de manerio de B, cum pertin. excepto uno gardino in eodem maner. coram dilectis & fidelibus nostris W de B & sociis suis,&c de banco, per quandam juratam 24 convicti suissent, & ea occasione prisone nostr. de Fleet adjudicat. ac bona & catalla sua, terr. & tenementa sua in manu nostra seisita, Nos record. & processum negotii prædict.cum omnibus ea tangent.una cum corporibus præd' W & aliorum coram nobis certis de causis venire fecimus, ac jam ex parte ipsius W nobis est supplicat. & cum ipfe in prisona hujusmodi occasione pramissorum jam dia detentus fuiffet & adbuc existit, velimus ab eo rationabil.finem pro imprisonamento illo, bonis & catall. ac terris & tenementis Juis præd' ac etiam pro estrepamento terrarum & tenementorum prædict.recipere,ipsum à prijona, qua sic detinetur facer.liberari: Nos statui ejus compatientes in bac parte, ac volentes eidem W gratiam

011

gratiam facere fecial; Vobis mandamus, quod vifis record. & proceffu prad & habita consideratione ad valorem bonorum de catall. terrarum & tenementorum prad' ac eftrepament. eorund. rationabilem finem de codem W, pro co quod ad nos pertinet in bac parte recipiatis & ipfum W a prisona, qua præmissa occafione detinetar deliberari, o ei bona & catalla, terr. & tenement. fua in manu nostra existentia sic liberari faciatis per finem Supradict. Tefte. Oc.

And thereupon the party shall be fined, as the Justices 43 E.3.26. of the Kings Bench will affels in their discretion; and upon See Statutes that they shall grant a Writ to deliver his goods and his 3 H.8.ca.15. Lands, and for to deliver him out of prison, and the Writ

shall be such:

Rex Vic'. &c. cum W de M unus jurator. in quadam inquifitione capta anud W coram W de B, & fociis suis fustic.dom. Regis,&c. (ut supra, usque ibi) Justic. nostris de banco per breve nostrum de falso sacramento per ipsum W fact.per jurat.24 Milit. convict.fuiffet, & ea occasione prisone nostr. adjudicat. bona & catalla, necnon terr. & tenementa sua in manu nostra feisit. funt, nobis constat per inspectionem record. or processorad. que coram nobis venire fecimus, As idem W postmodum venisset in Curia nostra coram nobis, & finem fecit nobiscum pro impri-Sonamento prædicto, & terris & tenementis suis habendis: Tibi præcipimus, quod omnia terras & tenementa ipfius VV, fi ea occasione & non alia in manu nostra existent.eidem VV sine dilatione rehabere fac. & de corpore ipsius VV capiend. occasione præd.omnino supersedeas. Proviso tamen quod de valore terraru & tenementorum prædictorum à tempore judicii super veredicto juratis prædict redditus ufque ad datum isties brevis, & etiam de estrepamento corundem cum inde inquisit. fuerit, nobis respondeas, Teste VV. Thorpe, &c. Anno 6. Rotulo 104.

And there are divers other manner of forms of Writs of Attaint, which are not here mentioned, because a man may

fee them in the Register.

#### Writ of Oyer and Terminer.

"He Writ of Oyer and Terminer should not be properly called a Writ; But it is a Commission directed unto certain persons, when a great assembly, insurrection or a hainous misdemeanor or Trespass is committed and done in any place. Then the manner and usage is to make such a Commisfion of Over and Terminer, or hear and determine such misbehaviour; and the Statute made 2 E. 3.527.2 requireth, That no Commission de Oyer and Terminer be granted but before the Justices of one Bench or other, or the Justices Itinerants. X 2

and that for horrible Trespalles; and it is of the Kings special grace, according unto the form of the Statute thereof made in the time of the Grandfather of the said K.Edward;

and the form of the Commission is such:

Rex dilect. & fidel. suis A, B & C, falut'. Ex gravi querela D accepimus, quod E,F & G, ac quidam alii malefactores & pacis nostræ perturbatores in ipsum D apud N vi & armis insultum fecerunt, & ipsum verberaverunt, &c. ita quod de vita ejus desperabatur, & alia enormia ei intulerunt, ad grave damnumipfius D & contra pacem nostram. Et quia transgression. si aliter perpetrata fuerit, relinquere nolumus impunitam : Afsignamus vos & duos vestrum Justic. nostros ad inquirend. per Sacramentum proborum & legalium hominum de Com. Lincoln. per quos rei veritas melius sciri poterit, de nominibus malefact. præd. qui una cum præf.E,F & G transgreff.illam perpetrar. & de transgres.præd. plenius veritatem, o ad eandem transgress. audiendum & terminandum secundum legem & conf. regni nostri. Et ideo vobis mandamus quod ad certos dies & loca, quod vos vel duo vestrum ad hoc provideritis, inquisitionem illam faciatis, & transgreff.illam audiatis & terminetis in forma prad. fact. quod ad justitiam pertinet secundum legem & consregni nostri: salvis nobis amerciament. & aliis ad nos inde spectant. Mandamus enim vic. nostro com.præd. quod ad certos dies & loca, quos vos vel duo vestrum ei sciri fac. venire faciat.coram vobis vel duob. vestrum,tot & tales probos & legales homines de ball. tua, per quos rei veritas in pramissis melius sciri poterit & inquiri. In cujus rei testimonium. &c.

And the Rule in the Register is, That if this clause, Ac quid. alii malefactor, &c. be not put into the Commission aforesaid, then in the end shall be this clause, Per ques rei veritas melius sciri poterit, de transgr.præd. plenius veritatem

ad eandem transgressionem,&c.

And the form of the Writ which shall be directed unto A

the Sheriff upon that Commission is such:

Rex Vic', &c. Ex gravi querela D,&c. (ut supra, usque ibi) assignavimus ditest', &c. A,B & G, & duos corum fustic.nost', ad inquirendum per sacramentum proborum & legal. bominum, &c. (usque ibi) audiendum & terminandum secundum legem & cons.regni nostri. Et ideo tibi præcip. quod ad certos dies & loca, quos iidem A,B & C tibi scire sac. venire sacias corameis vel duobus corum, tot & tales probos & lega. bomines de balliva tua, per quos rei veritas in præmis. melius sciri poterit & inquiri, & babeas ibi boc breve, &c.

And the King may make a Writ of Affociation unto the B Juffices of Oyer and Term. to admit them into their Company

whom

whom the K.hath associated unto them, and the form is such:

Rex dilectis A, B & C. Sciatis quod cum nuper ad querimoniam D nobis suggerent. quod E, F & G, & quidam alii malesat.

& pacis nostr. perturbatores, &c. (usque, &c.) impunitam:

Assignamus vos & duos vestrum fustic. nostros, &c. (usque) ad

audiendum & terminandum, secundum legem & cons. Assignavimus vobis vel duobus vestrum faciendum. Ita tamen quod si ad

cert. dies & loca, quos vos vel duo vestrum ad hoc provideritis,

ipsum H adesse contigerit, tunc ipsum ad boc in socium admittat.

in sormam pred. Mandamus enim eidem H quod una vobiscum,

vel duobus vestrum ad hoc intendat, seut præd est, seste, &c.

And the form of the Writ of Association, which shall be directed unto him who shall be associate unto the Commis-

fioners is fuch:

Rex diletto & fideli suo H salutem. Sciatis quod cum nuper ad querimoniam D nobis suggerentis, quod E, F & G, ac quidam alii malesatives, &c.assignavimus dilect.&c.A,B & C,& duos eorum Justic.nostros, ad inquirendum,&c. (ut in patent.usq.ibi) terminandum secundum legem,&c.Associavimus vos pras. A,B & C,& duobus eorum ad pramissima cum eis vel duobus eorum faciendum; itatamen quod si ad certos dies & loca quos iidem A,B & C, vel duo eorum ad boc providerint, vos adesse contigertunc vos ad boc in socium admittant, alioquin A,B & C, vel duo eorum (non expectata prasentia vestr.) ad pramissis ciendum procedant. Et ideo vobis mandamus, quod ad pramissi ma cum pras, A,B & C, vel duobus vestrum intendatis in sorma pradiaturum,&c. salvis nobis,&c. Mandamus enim eisdem A,B & C, quod vos ad boc in socium admittant, sicut pradiest.

And then the Kingmay send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the day of the Sessions. And this Writ is called a Writ of Sinon omnes, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such:

Rex dilect. A,B,C & H salutem, cum nuper ad querimoniam D nobis suggerentis, quod E,F & G, ac quidam alii malesact. &c. (usq:bi)contra pacem nostr, assignaver vos pres. A,B & C, & duos vestr. Justic. nostros, &c. (usq:bi) audiend. & adterminand. fecund.leg. & consuetud. regni nostri. & postmodo associaver vobis pres. A,B & C,& duobus vestr. pres. H adpremiss. faciendum: Vobis mandamus quod si vos omnes premiss. faciend. commode interesse non possitis, tunc vos tres ves duo vestr. quos presint. esse contiger, ad premiss. saciend. secund. lege. &c. procedatis. seste.

D And if the King make Commissioners of Oyer and Terminer A,B and C, and afterwards by another Writ doth af-

A fatra: fociate unto them I de H, who is admitted, &c. and afterwards I ds H dieth. The King may make a new affociation of other persons to the first Justices; so that association shall be made and granted after allociation; and he may make affociation of two or three perfons unto the first Committioners, or to those of them who are living to continue the proceedings, and to proceed to hear and determine the whole matter, and that they do admit those he doth associate, or two or any of them to proceed upon the whole matter, and fuch Writ is in the Register: and by that it appeareth, That by the death of any of the Commissioners, the matter shall not be discontinued and the Writ of association shall be Patent, and the Writ directed to the Justices of Oyer and Terminer to admit the others in their fociety shall be close.

And if a Trespass be done unto one in the confines of E two Counties, then the party may fue a Commission of Oyer and Terminer directed to certain persons, to hear and

determine the matter, and the form shall be such :

Rex dilectis,&c.Ex gravi querela D accepimus,quod G bona & catall.ipfius D ad valenc. centum librarum apud M,R & N, que funt in confinio com. Norff. Suff. invent. vi et armis cepit & asportavit,&c. (usque ibi) Justic.nostri ad inquirendum per facramentum proborum & legalium hominum de Com. præd. per quos,&c. Mandamus enim Vicecom. nostris Com. prad' quod ad certos dies & loca, in confinio Com. præd.quos, &c. coram eis in confinio eorund. Com.tot & tales probos & legales homines, &c.

And the Writs directed unto the Sheriffs of two Counties

shall be close.

And a Commission of Over and Terminer was granted upon A a Rescous made upon the Kings Bayliff where he distrained for debts or amercements to the King, and Rescous was made upon him.

And the King may grant certain Commissions de Oyer & B Terminer, divers Trespasses done by any person at the suggestion of divers persons, without nominating any in the Commission, and then the form of the Commission beginneth

in this manner.

Rex dilectis,&c. Ex clamofis querimoniis diverforum hominu de Com. N ad nostram sepius pervenient. audit.quod A Episcopus Wint.&c. plur. or diversas oppress. &c. And he shall have the

like Writ unto the Sheriff to return the Panel.

And if a man have goods and merchandise in any Ship C upon the Seas, which Ship is broken by tempest, and the goods cast upon the Lands, there are no wrecks, because certain persons came alive to the Land, and the Merchandi-

fes or goods are taken by malefactors unknown, &c. The party may have a Commission of Oyer and Terminer, directed unto certain persons to enquire of those who did the Trespass, and to hear and determine the same, and to make restitution unto the party, and a Writ unto the Sheriff to return probos & legales homines, &c. before the faid Justices, &c.

And a man may have Commission of Oyer and Terminer, to enquire of Extortions, Oppressions, and other misdemeanors of under-Sheriffs, Escheators; Bayliffs, Clerks of the Market, and all other Officers, upon the complaint and fuit of any one that will fue, and a Writ anto the Sheriff to return a

Jury before the faid Justices.

And also the King may direct his Writ unto the Sheriff, or unto Mayors or Bayliffs, to do as much as in them lieth and appertaineth to them, to remove such persons from their Office, against whom it is supposed that any one will complain; Or that he doth not put fuch or fuch into any Office, until enquiry be made of their carriage and behaviour,&c.

And if a man fueth a Commission of Over and Terminer against divers persons for taking of his Goods and Chattels, and when they have taken them, they waste, spend or eloyn them; Then the party who fued out the Commission shall have a Writ unto the Sheriff, reciting the matter, commanding him to stay the goods, and to put them into safe custody, until it be otherwise provided and adjudged by the Justices of Oyer and Terminer, or by other Justices to be after affigned. And upon that Commission of Oyer and Terminer, if it be found for the plaintiff, the Justices may return the goods to the party, and give him damages, and therefore it varieth from the Action of Trespass sued before the Justices of the Kings Bench, or the Common Pleas.

And in the time of the vacation of a Bishoprick, if any person hunt in the Parks or Chases of the Bishop, the King may fend his Commission of Oyer and Terminer to certain persons, to hear and determine and enquire thereof; and the

Writ shall be such:

Rex dilect.&c. Sciatis quod assignavimus vos & duos vestr. Fustic. nostros ad inquirendum; &c. de Com. &c. per quos, &c. qui malefactores & pacis noftræ perturbatores parcos de S, H & A in Com. predict. postquam ipsi ad manus nostras ratione instantis vacationis Episcopatus Cicestr. devener. vi & armis freger. & in eis fine licentia & voluntate noftris fugaver. & fer as ceper. & asportaver. & alia enormia nobis ibi lem intuler. in nostri dispendium & contemptum, ac contra pacem nostram, &

X 4 transgreffionem transgressione pradict, plenius veritatem, & ad transgressionem illas audiendum & terminandum, secundum legem, & c. Et ideo vobis mandamus, quod ad certos dies, & c. inquisc. illam sac. & transgressionem, & c. terminetis in sorma pradicta, facturum, & c. Mandamus, & c. & inquiri, & c. Teste, & c.

And if in the time of the vacancy of the Arch-bishoprick, H any person doth hunt in the Parks, or cut down the woods, or fish in the Piscaries of the Bishop, &c. when the Arch-Bishop is created, the King may send and grant the Commission of Oyer and Terminer, to enquire and determine the Trespass in the time of the vacancy; and the form of the Commission

shall be,

Rex dilect. & c. Ex gravi querela venerabilis Paftoris W. Ebor. Archiepiscopi accepimus, quod quidam malesator. & c. parcos, & c. (and recite in the Commission all the Trespass especially) & alia enormia, & c. in nostri contemptum manifestum, & deterior. Archiepiscopatus pradict. & dicti Archiepiscopatus pradict damnum, & contra pacem nostram. Et qua comtempt. transgression damnum, & c. assignavimus vos, & c. (usque ibi) ad contemptum & transgressionem illas, tam ad settam nostram quam pr f. Archiepiscopaudiendum & cterminandum secund legem. & g.

Et ideo vobis, Oc.

But it is to see how it standeth with the Statute of Marlebridge, that the Bishop shall have an Action and punish a Trespassione in the vacancy of the Bishoprick:but it seemeth it shall be so by these words in the Statute, Quod si rapina a'iqu falla funt Abbatibus vel aliis Pralatis Ecclefiafticis, &c. And in the end of the Statute are these words; Si autem in terris & tenementis bujufmeai religiofor.de quibus eorum Prælati obier. seisiti, ut de jure Ecclesia sua, aliqui se intrudant tempore vacationis, &c. And it seemeth these words bujusmodireligiosorum, shall extend to Bishops: as much as tosay, the Bishop shall punish a Trespass done in time of vacation of the Bishoprick, in cutting down of Trees, &c. for of Right the King cannot cut such trees; but for hunting in the Parks, of fishing in the Piscaries, it seemeth the King ought to have the Action for the Trespass done in the time of the vacancy: But if they do destroy all the fish within the fishpools, or kill up all the Deer in the Parks in the time of the vacancy, it seemeth reasonable, that by the Statute of Marlebridge, the fuccessor have an Action for such Trespass: Quare of this

And it is intended, That the King of right ought to keep & A defend his Kingdom, as well against the Sea, as against enemies, that it be not drowned or wasted, and to provide remedy for the

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the same: And also to provide that his subjects pass by all ways through the Kingdom with safety; and therefore if the Sea walls be broken, or the Sewers or gutters not scowed, so as the fresh waters cannot have their courses, the King ought to grant a Commission to enquire thereof, and to hear and determine the defaults; and the form of the Commission is such,

Rex dileA. A. B. & C. &c. cum wall.foffata,guttura, suera, pontes, calceta, gurgites, & trenchia in partibus Holland. inter crucem de W. & pontem de E.per impetum maris, & refluxus, ad inundationem aquarum dulcium per divisa loca in partibus pred. adeo diruta funt & confratta, quod qua plurima damna & ineftimabilia pro defe ureparatione earundem Wallarum, foffatorum, gutturarum, suerarum, pontium, calcetor. & gurgitum, & obstrutionem trenchiarum præd. temporibus retroallis evenirent ibidem, majoragiproceffu temporis evenire timent. nift super hog celerius remedium adhibeatur opportunum, Nos pro eo, quod ratione dignitatis nostra regia, ad providendum salvation. regn.nostr. circumquaque sumus astricti, Volentes in hac parte congrumm & festinu remedium adhiberi, assignavimus vos, orc. ad supervidendum wall. follata.guttura, sueras, pontes, calceta, gurgites & trencheas prædict. o ad inquirendum per sacramentum tam Militum quam aliorum proborum & legalium hominum de partibus præd' tam infra libertates quam extra, per quos, &c. poterit, per quorum defectum bujusmodi damna contigerint ibidem, & que terras & tenementatenent; seu communiam pasturam aut piscariam in partibus illis, vel etiam defensionem, commodum, & salvationem babent, vel qualitercunque per wall. foffata, guttura, sueras. pontes, calceta, gurgites prad. habere poter. fed etiam damna per trencheas pradict. Suftinent vel Suftinere poter & ad omnes illos pro quantitate terrarum & tenementorum suorum, live per numerum acrarum, five per carucatas pro rata portionum tenur. fue, feu pro quantitate commun. paftur. vel pifcarie fue ibidem distringendum, & per amerciamenta & alio modo, prout melius videritis faciendum, puniendum una cum ballivis libertatum & aliorum de partibus illis ad bujusmodi wallea, fossata, guttura, Jueras, pontes, calceta, & gurgit. in locis necessar. reparand. & quotiescunque, bubi necesse fuerit de novo faciend. ac trencheas præd. in locis necessariis obstruend. ita quod aliquibus tenent. terrar. seu tenement. bujusmodi, seu communiam pastura, seu piscaria habentibus, divit. vel pauper. aut alt. cujuscunque fuerit conditionis, status, aut dignitatis, quam defensionem habere poterint qualitercunque per prædicam walliam, foffatum, guttura, sueras, pontes, calceta, & gurgites, seu etiam damnum per trencheas præd. fustinent, vel poterint sustinere, five fuerint infralibertates vel extra non procedant. in hac parte: Et ideo

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robis mandamus, quod ad certos dies & loca quos vos, &c. ad boc provideritis præd wall. foffata, guttura, fueras, pontes, calceta, gurgites, & trencheas supervideatis, & pramis. omnia & singula faciatis & expleatis in forma pradicta, & omnia que per vos ordinari & fieri contigerit in hac parte, tam infra libertatem quam extra, faciatis firmiter observari. Mandamus enim vic.nostro Linc.&c.quod venire faciat, &c.tot & tales tam milites quam alios probos,&c. tam infra libertates quam extra,

per quos rei veritas melius sciri poterit, &c.

And upon this Commission a Writ shall issue to the She- A riff rehearling the whole matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall fit by virtue of that Commission, and take divers presentments and indictments, and award processupon them returnable at a certain day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearing the death of him who is dead, or of those who are dead, commanding them to continue the proceedings begun, and to proceed upon that process, and to hear and determine all these defaults and offences in the faid Commission, the King reciting, that he hath fent unto the Executors or those who died, to fend all the Rolls, Records, and Process before the new Commisfioners. And upon that Commission, the King shall send a VVrit unto the Executors of the Justices who are dead, to fend the Rolls, Records and Process as aforesaid, forthwith under their Seals, and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a precept unto the Sheriff, that at a certain day and place he return before them the Panel according to their Commission, and that he be there before at the same day with the precept. And this new Commission shall be made as well to continue the fuits and process betwixt party and party fued before the Justices of Oyer and Terminer, as well as the indictments and presentments made and found for the King. And the King may put into the Commission a command unto the faid Commissioners, to receive the Records and the Rolls, and process of the said Executors. But see the Statute of Sewers and especially the Statute of King Henry the Eighth for that matter.

And if any English Merchants goods be spoiled, and his B goods taken beyond the Seas by Merchants strangers, and the English Merchant was beyond Sea to have Justice and

restitution

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restitution made thereof and could not obtain the same, and this matter is testified unto the King in his Chancery. Now upon this Testimony, if the Merchants strangers shall come into any place within the Realm of England with their goods; then the English Merchant shall have a Writ out of the Chancery directed unto the Mayor or Bailiffs where such Merchants strangersare with their goods to arrest them, and their goods, and to keep them under arrest until they have fatisfied the party his damages, which he hath sustained by reason of their misdoing. And may have divers Writs directed unto divers Ports or Towns unto the Mayor or Bay. liffs thereof to arrest such Merchants and their goods, and to detain them until they have fatisfied the English Merchant for the Trespass which they have done unto him beyond the Seas. But it seemeth the English Merchant shall not have fuch Writ for any debt due to him by contract from a Merchant stranger upon a contract made beyond the seas, if the Merchant do come into England, or his goods; Quere tamen thereof. And the King shall recite in his Writ which is directed unto the Mayor or Bailiffs, &c. how he hath tent the like Writ unto the Mayor or Bailiffs of fuch a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like manner; And this Writ shall be sued to attach all those who did the Trespass, and their goods unto the value of the Trespass, which he supposeth he was endamaged.

And if certain persons ought to accomptunto a Corporation, as if the King grant, To the honest men of the Town of N. a certain fum, out of things which come to the fame Town to be fold, and there are Collectors to gather the fame, who do fo; The King may grant a Commission to certain persons, to enquire what persons have received such fums, and to hear and determine the matter, and to hear their accounts thereupon, and do in that case as Auditors shall do, and he shall send a Writ unto the Sheriff to return a Jury before the same Justices at the day, &c. which they 18 E. 4.1. appoint, &c. to enquire thereof, and the Commission is in Conspi acy the end of the Writ, Ex parte talis, and before the Writs one dieth, of Debt, in the Register.

against two, pendent the Writ, per

Curiam the VVrit shall not abate, and note that Finch de 44 E.3. 32. that one shall answer if he appear.

# Writ of Conspiracy.

Ve Statute Writ of Conspiracy lieth where two, three or more D A persons of malice and covin do conspire and devise to 33 E.1. de Conspiratioindict any person falsly, and afterwards he who is so indicted is acquitted, now he shall have this Writ of Conspiracy against V. after E, is acquitted, now he mail have this writ of Compiracy against F.G., Conspi. them who so indicted them. But this Writ lieth against two racy shall be persons at the least who do so conspire, for if one person of against one, malice and false imagination do labour, and cause another falfly to be indicted, the party who so is indicted shall not Note if the have a Writ of Conspiracy, &c. but an Action upon the Cale Action be against him who so caused him falsly to be indicted. brought a-

gainst divers, and all but one are acquit, the Action faileth. 28 Aff. 12. fo if all but one are discharged by matter in Law.

If two men conspire to indictanother, and afterwards he E is indicted, for which he bringeth appeal upon the fame indictment, and after is nonfuit upon his appeal after declaration or before declaration, the party who was falfly indi-Red shall have a Writ of Conspiracy, because he is arraigned after the declaration upon the Appeal, and is acquitted, and before the declaration upon nonfuit he shall be arraigned upon the indicament, and if he be acquit, he shall have a Writ of Conspiracy, &c. But if he befalfly indicted, and that Confpi- after an Appeal is sued upon that indictment, and he put to racy lieth as answer unto the Appeal, and afterwards is acquitted by verdict upon the Appeal, he shall not have a Writ of Conspiracy in that case, because he is acquit upon the Appeal, for he is ar- and not upon the indictment, &c. But upon nonsuit in the raigned up- Appeal a Conspiracy doth lie for the cause before mentioned.

peal, Stamford 172. That is indicted at the fuit of the King, 19 E. Fitz. Conspir. 12. 5 E.3.ib.22.

And if two conspire to cause a man to sue an Appeal against F another of felony or murther without any indictment taken or found thereof, and after the defend. is acquit by verdict, he shall not have a Writ of Conspiracy against those who 13 E.3. Con- conspired to appeal him, because that by the Statute of west. 2.cap.12.Quia multi per malitiam, it shall be enquired of the the abettors abettors, if he be not indicted thereof; and if they be found fall not be abettors, in the definition in the fall have a Scire facias against them out of the same enquired of he shall have a Scire facias against them out of the same Court where he is acquitted, to answer him his damages. And theabetment fo if he get a nonfuit in any fuch appeal, where there is not is found by any indicament, the defend shall have a Writ of Conspiracy after

34 H.6.9. per Prifeit. Note, this case proves well upon

Appeal as indiament, on the ap-

5 E.3. Confpiracy 22. spitacy 25. but where

enquest.

D

after the nonsuit or after the acquittal: But the form of the 19 H.6.19. Writ of Conspiracy where he is acquit by verdict, doth vary & 4H.6.23. in words in the end from the Writ of Conspiracy which is add tiel refounded upon the Plaintiffs nonsuit in appeal, for one Writ coord, is a good reply founded upon the verdict is, Quousque secundum legem, &c. in conspiracquietatus suisset. And the other Writ of Conspiracy cy. founded upon the Plaintiffs nonsuit is, Quousque idem querens per consideration. Cur. nostr. inde quietus recessit. The form of which Writs follow:

Rex Vic', &c. Si A fecerit, &c. tunc pone, &c. B & C quod fint coram nobis, &c. Osens, quare conspirinter eos apud N. probabita præs. A de quodam jumento surtive apud N capto & 22 AJ-77-abdusto indistari, & ipsumea occasione capi, & in prisona nostra Warr. quonsque in cur. nostra coram disectis & sidel. nostr. R & S Justic. nostris, ad Gaol. nostram warr. deliberand. assign. secundum legem & consuctud. regni nostri acquietatus suisset, detineri fals & malitiose procuraver. ad grave damn. ipsus A, & contra form. ordinat. in hujusmodi casu provis. Et habeas ibi nomina pleg. & boc Breve. Teste, &c.

The other Writ founded upon Nonsuit in appeal is such:
Rex Vic', &c. Si A scerit, &c. tune pone, &c. B & C quod

sint coram nobis. Sc. Ostens. quare conspir. inter eos apud N probabita præs. A de mort. D apud E, nuper intersect. appellari & ipsum A ea occasione capi & in prisona nostra de L, quousque in cur. nostra coram nobis idem A, &c. per consider. Curia nostra inde quietus recessit. &c.

And if a man cause one as Principal to be appealed of felony or murder, and another as accessary to him, and afterwards is nonsuit in his appeal, the accessary shall have a Writ of Conspiracy as well as the principal.

And if the Principal and one is accessary to be indicted 33 H.6.r. of Felony, and be taken and arrested, and the Principal is 34 H.6.r. indicted and acquitted, now by that the accessary is different if the charged, and the accessary thereupon shall have a Writ of before he be Conspiracy against those who conspired to indict him, and attainted the Writ in the end shall say, Quonsized (the Principal) secured. light, & ide (the Accessary) quietus recessit.

And a man shall have a Writ of Conspiracy upon an indictment before any Mayor, Baylist of any City or Burrough who have Gaol-delivery within the City or Burrough if he be acquitted before them, &c. for that acquittal dichargeth

C him of the felony. But a Writ of Conspiracy doth not lie 20 H.6.5. against the Indictors,&c.

D If Jurors be sworn to enquire, &c. and afterwards any of 7 H.4. 31.
them is discharged by the Justices, he shall not be punishe for \$ H.4.6.
what 21 E.3.19.

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47 E. 3.17. 27 H.8.2. 20 H.6:5. & 33. 35 H.6.14. & 19.

fpiracy 1.

what he did when he was fworn: But if he do conspire after, he may be charged for the same in a Writ of Conspiracy.

And he who cometh into Court, and discovereth felonies, and is fworn to give evidence to the Jury, is not chargeable

in Conspiracy.

In a Conspiracy against two, one pleadeth to the Writ, E 14 H. 6.Conand the other matter in law, which is adjudged for him. and the plea unto the Writ found by verdict against him who pleaded unto the Writ, the Plaintiff shall have Judgment against him who pleaded to the Writ: But if both had pleaded Not guilty, and one had been found guilty, and the other not, there the Plaintiff shall not recover, for then he did not conspire as is supposed by the Writ. But it may be that they did conspire in the case aforesaid, although that the matter in law be adjudged for the Defendant. And F if the Principal die before any verdict given upon the against two, acquital, or have a pardon and plead it, then the accessary shall not have a Writ of Conspiracy, because he is discharged by the death of the Principal, or by the pardon to

Confpiracy one is attaint, the other makes the principal. default,

Judgment

shall be against him. 24 E.3.34. but quare by Stamferd 174. for 27 E.3.it is holden that one shall not answer without the other.

> If a man be falfly indicted of felony, and afterwards by G Act of Parliament a general pardon is granted of all felonies, the party now shall not have a Writ of Conspiracy, although he will plead unto the indictment and is acquitted, and will not plead the Act.&c. because his life was not in danger, and the felony was discharged by the Act. The Juffices of Gaol-delivery arraign a prisoner of mur-

ther within the year where an Appeal is depending against the same prisoner for the same murther, which they know, and yet they proceed and acquit him, he shall have a Conspiracy, although he was not acquitted nor discharged of the Appeal; See the Statute of An. 3 H.7. cap. 1. And before that Statute it washolden, 21 H.6. by Paston and Newton, That he shall have a Conspiracy; for they said that he should be hanged if he had been found guilty upon the arraignment on the Indictment. And so the Statute de Conspiratoprint 5, and ribus, temps, E.1. which Statute doth not determine in what Cases a Conspiracy shall lie. But by the Statute of 4 E. 3. cap. 10. which giveth the Justices of Nisi prius and of Assise Statute, they to hear and determine of Conspiracies, Consederacies and Champerties, which they cannot determine in short at the Kings time, they adjoin them in Banco, and shall be there deter-

21 H.6.28. 29. 17 Aff. I.Br. Appeal ss.

Raftal Nife note that before that cannot arraign them mined. fuit.

And if a man be indicted or appealed of Treason or Felony or a Trespass done in a Forcin County, &c. if he be acquit thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble damages by the Writ upon the Statute of 8 H.6.c.80.

And if a man be indicted of Felony or Treason, where there is not any such place within the County, he shall have Conspiracy, and recover his damages against the Abertors and Procurers or Conspirators by the Statute of 18 H. 6. cap. 12,

And the form of the Writ for the accessary in a Writ of

Conspiracy is:

Quare conspiration. &c. præf. A de eo quod ipse abbettasse & procurasse debuisset D que fuit uxor, E, F & G de morte ipsius E quondam viri sui appellari coram J, & sociis suis nuper Jufliciar. nostris ad appellum illud audiend, & terminand.indict', [116] or ipsum ea occasione capi & imprisonari, & in prisona nostra Linc. quousque coram præf. Justic. nostris inde, secundum legem

& consuetud. regni nostri acquietatus fuiffet, &c.

And there are divers other Writs of Conspiracy grounded upon Disceit, and Trespass done unto the party, which are properly Actions of Trespass upon the Case; as if two men do conspire to endite another man because he did not arrest a Felon, who passed by the Town of N; and because they caused him to be indicted and amerced in the Lect of Rand F, and took and imprisoned him for that amercement until he be acquit in the faid Leet.

And if men say and affirm unto A, that he hath right unto fuch Land, and procureth and causeth him to sue an Action for the same against B who is Tenant of that Land, &c. by which he is of necessity compelled to fell other Lands or Tenements for the defence of his Land, &c. now he shall have an Action against those who procure or con-

spire to cause A to bring this Action,&c.

And if two men procure or cause one to be indicted for hunting in anothers Park, for which he is taken, imprisoned and put to charges until he hath acquitted him of the Trespass, he shall have a Conspiracy against them.

And Conspiracy shall be maintainable against those who 46 E.3.20. conspire to forgefalse Deeds which are given in Evidence, 39 E.2.13.

by which his Land is loft.

Conspiracy shall be maintainable against those who con-spiracy 9. spire to bring an Affise in the name of the Plaintiff against a Def. and to make one Attorney for the Plaintiff, in which 42 E.3.14. Affife the Plaintiff was found Villain,&c, now he may bring this Writ of Conspiracy,

3 Aff. 13-11 H.7.25.

And Conspiracy shall be maintainable against those who F conspire to endite one of Trespass, &c. whereof he is acquitted.&c.

And Conspiracy shall be maintainable, because the def. G made one to present in the name of the Plaintiff unto an Advowson, and for that presenting unto the Bishop who is

40 E.3.19. admitted and instituted,&c.

If one conspire to cause a false Office to be found of my H Land, which is found by his procurement, &c. I shall have a Writ of Conspiracy.

47 E.3.15. but the office ought to be fufficient.

In a Conspiracy against two, one justifies because he was I then Justice by Commission, when the Plaintiff was indicted before him, &c. and for any conspiracy before, he pleaded

non guilty.

8 H.4.6. 11 H.7.26.

38 E.3. 3.

9 H.6.30.

22 H.6.49.

And a Writ of Conspiracy for inditing of Felony doth K not lie but against two persons at the least; but a Writ of Conspiracy, for enditing one of Trespass or other falsity made, as in the Cases aforesaid, lieth against one person only.

And a man shall not have a Writ of Conspiracy for indicling him of felony against Husband and Wife, because they are but one person; but against Husband and Wife and a third person it well lieth.

But if the Writ of Conspiracy be brought against two, L then it shall be said properly a Writ of Conspiracy. But if it be brought against one person only, then it is but an Action upon the Case upon the falsity and disceit done, because one person cannot conspire with himself.

And the Writ of Conspiracy may suppose the conspiracy M to be in two feveral places, and shall be good; and the Writ ought to be brought in the County where the Conspiracy is made, and not where the Indicament was, or where the deed was done,&c.

There is also another Writ of Conspiracy which is given N upon the Statute called Articuli super chartas, 28 E. I.cap. 10. which Writ shall be directed unto the Justices of Assise to enquire of the Conspiracy; and the Writ shall be such:

Rex dilectis & fidelibus suis W de S & sociis suis, &c. affign. falut. Cum inter ceter. articulos, quos dominus Edw. quond. Rex Angl. avus nostr. ad emendac. status populi sui conceffet, ordinat.fit, quod de Conspiratoribus, falsis informatoribus o malis procuratoribus duodenar. inquisitionum, assisarum & juratorum, Justic.de utrog;banco, Justic.ad aff.capiend.affign. cum in patriam venerint ad officium suum faciend. faciant inquisition' ad cujuscunque querelam fine brevi, & fine dilatione, & faciant. Justic.conquerenti, prout in articulis præd.plenius continetur:

continetur: Nos dictos articulos in omnibus inviolabiliter obfervari volent, vobis mandamus, quod inspecta ordinat.præd.ult. ad profecution. omn. o fingul.coram vobis conquer volent.faciat. quod fecund. formam ordinac.præd. fuerit faciend. Tefte, &c.

And upon that he shall have an Alias, and a Pluries, and Attachment against the Mayor or Sheriff &c. if they do not according to the Writ fent unto them, or return the cause why they cannot do the same; and it seemeth reasonable that the party in prison should have an Action upon that . Statute against the Recognisor, if he find him not bread 4 10 2290 and water in prison,&c. according to the Statute.

## Writ of Accompt.

Writ of Accompt lieth divers ways; for if a man make 9 H.6. Ac-A one his Bayliff of his Mannor, &c.he shall have a Writ compt s. of Accompt against him as Bayliff.

And if a man make one his Receiver, to receive his Rents 6 R.2. Belk, or debts.&c. he shall have a Writ of Accompt against him Accompt 47 14 H.4.20. as Receiver.

And if a man make one his Bayliff, &c. and also his Receiver, then he shall have an accompt against him as Baylist, and alfo as Receiver.

A man shall have a Writ of Accompt against one as Bayliff or Receiver where he was not his Bayliff or Receiver ; 29 H.6. Fitz, for if a man receive Mony for my use, I shall have an ac- Accompt 6. compt against him as Receiver; or if a man do deliver 36 H 6, 10. mony unto another to deliver over unto me, I shall have 10 R 2 Acan accompt against him as my Receiver.

And so if a man enter into my Land to my use, and receive the profits thereof, I shall have an accompt against him as Bayliff.

And so if the Father doth occupy the Land of an Infant, which the Infant hath purchased or hath by purchase, the Infant shall have an account against him as Bayliff of his ve, 43 E.2. Lands; and this Writ of accompt may be fued as well in 21. Thorpe. the County as in the Common Pleas.

If a man have cause to have an accompt against one as Bayliff or Receiver, if he die his Executors shall have the Action: But an accompt doth not lie against the Executors 19 E.3. Fitz. of a Bayliff or Receiver, for the Receipt or occupation of Accompts. their Teflator. And the Writ of Accompt which shall be Accompt is sued in the County, is a Justices directed unto the Sheriff, given to Exwhich is fuch:

Starute and was not at the common I aw.

Two pur-

and one ta-

keth upon him to be

other, no

accompt li-

## Writ of Account.

Rex Vic. Linc. fal. Prec. tibi, quod Juftic. A quod jufte & fine dilatione reddat B rationabile compotum fuum de tempor. quo fuit balli. Juus in N & recept. denar. ipfius B ficut rationabiliter monstrar. poterit, quod ei redd. debet, ne amplius inde clam. audiamas pro defectu justitia. T.&c.

And for Executors the Writ is;

Quod redd.B & C exec. testamenti D, rationabil. compot. funm de tempor. quo fuit ball. ipfius D in No ipfius defuncti, ficut ration, monstrare poterit.

If two Merchants occupy their goods and merchandises D in common unto their common profit, one of them shall have an Action of Accomptagainst the other in the County or in the Common Pleas; and the Writ in the County shall be;

Rex Vic. &c. Præc.tibi quod Justic. A mercator. quod juste redd. mercat. rationabil. compot. de tempor.quo fuit recept. denar. ehafe a Mannor for life, ipfius B, ex quacung; causa & contractu ad communem utilitat. ipsorum A & B proven. secut per legem mercator. rationabiliter monstrar. poterit, quod ei redd.debet.

And this clause Ex quacung; causa & contractu, ought to Bailiff to the be put in every fuch Writ, whether it be fued in the Com-

mon Pleas or in the County.

And the Executor of one Merchant shall have such Writ E eth by 8 E.2. Accom. 115. against the other Merchant, but not against his Executor;

Rex Vic. &c. Præc. A quod redd. Brationabil. compotum de & 21 E.3.ib. tempore quo fuit receptor denarior. ipfius A, vel ballivus ipfius 30 E.t. Ac- Ain N & nisi fecerit, & præd. A fecerit te fecur. de clamor. suo Note, that in prosequendo, tune sum. præd. B, quod sit coram Justic.nostris apud Westm. in Quindena Pasch. &c. oftens. quare non fecerit, & bab. a Writ ibi fum. & hoc breve, oc.

which fup-

pofeth that de tempore que fuit receptor denariorum the def, shall not fay, that he hath accompted from such time to such time, but ought to shew certain for what things he hath accompted. Comia where the Writ is, as tempore quo fuit Ball. 3 E.3. Accompt 61.

And a Prior or Abbot or Mafter of an Hospital shall have F 14 H.4.Aca Writ of Accompt against him who was Receiver or Bailiff compt 124. 4 E.2.17. ib. in the time of their predecessor, and the form of the Writ 97. 31 E. 3. Shall be such:

Accomp. 57. Prac. A quod reddat I Prioressa de Srationabil. compotum de 25 E.3.45.in tempore, &c. ball. Alicia quondam Prioressa de Spredecess.prad.I the like A-& recept.denar.ipfius Alicia Prioreffa, erc. ction the

And another Writ thus, Pracipe A quod reddat. de faid that

he was not

receiver of the predecessor and admitted good. 20 E. 3. Accompt 78. Accompt lies against an Abbot notwithstanding the receipt was by the predecessor.

And

And another Writ thus , Prac. A quod redd. communitati vill. de W rationabil. compotum suum de tempore, &c. quo fuit receptor denar. ipfius communitat.in W. Et nifi, Oc. Et præd.

communicat. O.c.

And note that the Writ of Accompt fued in the County may at the fuit of the Plaintiff be removed into the Common Pleas, by a Pone without any cause shewed in the Writ, but shall not be removed out of the County by the Defendant without cause shewed in the Pone, &c. As if the Defendant plead a foreign release, then it shall be said in the Pone, Quia prædict. defend. in placitand.in Cur. noftra in N, in qua loquela pendet per retorn. brevis nostri, protulit quoddam scriptu acquietantie sub nomine ipsius A, continens in se praf. A omnes acc. quas versus præf. B def. ratione compotipræd.habuit,eidem B remisife in Com. Linc. fact. ut dicitur, quod quidem scriptum præf. A omnino deduxit, propter quod lequela illa in Cur. præd. ulterius deduci non debet : Fiat executio istius brevis fi causa sit vera, & aliter non.

There is another manner of Writ of Accompt founded Ve.4 E. 2. upon the Statute of Marlebridge, cap. 23. And that Writ lieth Br. 791. where it is where a man ought to make Accompt as Bailiff or Receiver, holden, if he and hath no Lands nor Tenements by which he may be hath any distrained, but is vagrant in secret places, where he will not Land it is be found, then the Plaintiff shall have a Writ of Accompt sufficient; which is called Monstravit upon the Statute, and the Writ but there he had in the

is of this form:

Rex Vic. &c. Monstravit nobis Prior de N quod cum A, wife, but 6s. extiterit ballious faus in K omnium rerum & bonorum fuorum 8 d.and had cur. habens & administrationem, idem A compoto suo non soluto not title to Subterfugia quærens, latitat in balliva tua, nec possit inveniri be Ten. by & distringi ad reddend.pr. f. Priori compotum suum prædict'. Et the Curtefie, quia de communi consilio regni nostri provisum sit: quodisti bal-livi, qui dominis suis compotum suum reddere tenentur, se sub-ent. traxerint, & terras veltenementa non habeant per quæ distringi valeant, per eorum corpora attachientur : Ita quod Vicecom. in quorum ballivis invenient. eos venire fac. ad compot. saum redd. Tibi præcipimus, quod si præd' Prior fecerit te secur. de clamore suo prosequendo, tunc præd. A attach. ita quod eum ha' eas coram Justic. &c. tali die, ad reddend. praf. Priori compot um fuum præd. ficut rationabiliter monstrare poterit, quod ei reddere debet, oc. o habeas ibi, oc.

But this Writ is not now in use, because that by the Statute of West. 2. cap. 12. made after the Statute of Marlebridge, process of Outlawry is given in a Writ of accompt against Bayliffs and Receivers; But yet he may fue a Monstravit

right of his

at this day if he will:and the form of the Writ of Monstravit directed unto the Sheriffs of London is fuch:

Rex Vic.Lond. salut. Monstravit nobis A, quod cum Bextiterit receptor denarior. A, ipsius & ball. suus in N, idem B compoto suo non solut. intersugia quarens latitat. in ball.vestra, & c. Et quia, & c. vobis pracipimus, quod si praed. A secerit vos secur. de clamor. suo prosequendo, tunc praed. B attachiatis, ita quod eum habeatis coram Majore civitatis nostr. Lond. & vobis in proxim. Hustingo vestro Lond. ad reddend. pras. A compotum suum praed sicut, & c. Et habeatis, & c.

And the Receivers and Bayliffs may be put in one Writ in the Monstravit thus, Receptor denar. ipsius A & ball. suus in N. But if the Writ be sued in the Common Pleas, then the Bayliff must be put, Sicut ball. suus & receptor denarior.

ipsius A in N.

See that in And a Writ of Account lieth against Gardian in Socage; A but the form of the Writ doth vary from the form of the Baylist, &c. and the form is such:

Receiver, the Defendant faid, that he was Gardian in Socage and not Bayliff, and good; per 32 E.3. accompt 60.

Rex Vic. &c. Si A fecerit. &c. tunc sum &c. B quod sit coram Justic. &c. oftens, quare cum de communi consilio regni nostri provis. sit, quod custodes terrarum et tenementor. tenentum in socagio bæred. terrarum & tenementorum illorum cum ad plen. etat. pervenerint, reddant rationabil. compotum suum de exitibus de terris et tenementis illis provenientibus de tempore quo custod. illam babuer. ratione minoris ætatis bæred. prædict. idem B, præs. A rationabil. compotum suum de exitibus provenient. de terris et tenementis suis in N quæ tenentur in socagio, et quorum custod. idem B babuit dum præd. A infra ætat. suit, reddere cont. ut dic. & ideo. &c.

dant hath the occupation or manurance of the Land, the action lieth, per 32 E.3' accompt 59 Fitz.27.

And if a man during the minority of the Heir enter into B Ve old NB.9 the Lands of the Heir which he hath by Desceut, and take and after the profits to the use of the Heir, the Heir at full age shall 149 B. for have an accompt against him as Gardian for the profits readmeafureceived until he come to the age of 14 years; and for the ment of Dower by profits received after the Heir come of the age of 14 years, he shall have a Writ of accompt against him as Bayliff, and Infant. not as Gardian, for he cannot be Gardian longer for Socage 16 E.z. ac-Lands but till 14 years of age: But the Heir shall not have compt 30. 3 & 4 Mar. an Action of accompt against him as Gardian until the Heir be of full age of one and twenty years, and that by the words

But my & cook my sty graft: y of opiniony of Re Shall hand in a rany himle after 14 15 the 183

(118)

n See that in a accompt ak gainft one a h Bayliff and B Receiver, the good, per 3

o good; per 32 a e e g 8 13 E. 3. accompt 77.

Notwith-

standing that he be

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of the Statute, which are, Qui cum ad atatem pervenerit, &c. But he shall have an Action of accompt against him as Baylisf during his Nonage, at what time he will against him who taketh the profits of the Lands which he hath by Descent

be he Gardian in Socage in Right,&c.

And a Writ appeareth in the Register, That if a man be found in arrearages upon his accompt, and the party Plaintiff do arrest him in London for those arrearages, then he may sue a Writ in Chancery directed unto the Sheriff rehearing the whole matter, commanding the Sheriff to detain and keep in prison him who is so arrested, until he hath satisfied and paid the arrearages. And it seemeth by the same reason. That if a man sue an Action of Debt upon arrearages of accompt before Auditors, and hath the party arrested. That he shall have a Writ out of the Chancery unto the Sheriff, to keep him in prison until he hath paid those arrearages; but I conceive this Writ doth not stand in Law, that he shall be kept in prison without answering unto the sue commenced against him.

A man may have a Writ of accompt against a woman as 14 H.6.4.

Receptrix denariorum, or against a Chaplain, but not against 16 E.3. ac-

an Infant.

E A man may have an accompt against one as Bayliff of a Court or Hundred.

And a man shall have an accompt against a Prior upon a 2 H.5.2. 47 Receipt had by his Commoign, but there the Writ doth E.3.16.4 E. suppose, that he himself did receive the mony,&c. and shall 3 ac.44 E.7. not say, by the hands of his Commoign. And so a Receipt made by the Husband, by the hands of his wife, is his own Receipt, and the Writ and the Count shall suppose that he himself did receive,&c. without saying by the hands of the wife: but it is otherwise if a Prior or husband receive mony of a stranger, then the Count shall be that he received by the hands of the stranger, &c. But the Writ shall be general, Tempore quosuit receptor denar, without saying by whose hands, but he shall shew that in the Count or declaration.

And if a man deliver goods or mony beyond Sea to deli- 41 E.3.9.12 ver to him again in England at a certain place, he shall have

an account for those goods,&c.

And if a man deliver mony to one upon condition, that 41 E.3.10. if he do fuch a thing, he shall have the mony, if not, then he who delivered it shall have it again, if he perform not the 12 H.4.18. Condition, he shall have an account against him for the same. ac.11 H.4.

If two have goods in Joynter, or in Common, and one of 75. skreen, them deliver the goods to one to render account, he alone 21 E.3. acfhall have an action for them.

Y 3

If compt 66.

43 E.2. 21. 45 E.3 20. 1119

If two have a Ward, and one take all the profits, the I other shall have an account against him, P.45 E.3.

If the Husband hath received the profits of the Wives A Lands, and die, the Wife shall not have a Writ of account of the profits nor of the Rents, during the Coverture against the Husbands Executors.

4 E.3.17. Firz.accom. 97.

If a Receiver or Bailiff make a Deputy, yet the action of B accompt shall be brought against the Receiver or Bailiff themselves, and not against their Deputies: for the Deputies receive the same to their Masters uses.

He who is Surveyor or Controller of Lands, shall not be C 11 R.2: accompt 48. charged in accompt.

4 E. 3.

accompt 34. 12 E.3.ibid.75, & 13 E.3.ibid.76.

An Apprentice shall not be charged to accompt by a D Writ of accompt: But the Master shall have a Writ of accompt against a Servant who is sent to receive mony, &c. if 8E.3.acc.94. he be Receiver.

6 E.3.3.accompt 102 Ve accompt

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as Receiver, the Defendant faid that he was his Apprentice, and no Plea, but he was forced to answer to the Receipt,

> The Parish Priest shall not be charged for the Offerings E offered by a Writ of accompt, if it be not otherwise agreed betwixt them, &c. For the Clerk holds the vessel in which they are put.

> If the King grant unto a Town the Toll of the things F fold in the same Town, for the walling of the Town, and other necessary things in the Town, and there be Collectors to receive the fame, if the Collectors will not render account thereof, They may have a Commission out of the Chancery to enquire of the Receipt of the Toll-mony, and the Receivers, and to hear and determine the same, and to hear their accompts, and a Writ of attendance unto the Sheriff, to return a Jury before the Commissioners.

#### Writ of Debt.

Writ of Debt properly lieth where 'a man oweth ano- G C.5 pa. 79. ther a certain fum of mony by obligation, or by bar-10 H.67. Debt per A- gain for a thing fold, or by Contract, or upon a Loan made mercement by the Creditor to the Debtor, and the Debtor will not pay in Leet. the Debt at the day appointed that he ought to pay it, then 22 H.6.56,

13 H.7.3. in debt against Successor upon afore to his Predecessor which comes to zhe uie of the ho fe, the Writ fall be in the Debet.

the

the Creditor shall have an Action of Debt against him for the same; and it may be sued in the County before the Sheriff by Justices, as well as in the Common Pleas; and the form of the Writ is sometimes in the Debt & Detinet, and sometimes in the Debtnet, and is it be in the Debtnet, it shall abate. It shall be always in the Debt and Detinet, when he who makes the bargain or Contract, or lends the money, or he to whom the Bond is made, bringeth the Action against him who is bounden, or Party to the Contract or bargain, or unto the lending of the money: and In Debt. 4-

H money delivered by the writ. But if a man fell 20 quarters of gainft hus-Wheat, or a Horse; if he bring Debt for the Horse, the writ band and shall be in the Detinet only, and the form of the writ sued in wife for a the County before the Sheriff for money, is such:

the VVrit shall be Debit & detinet, so in Debt against or for the Successor in respect of Obligation made to the Predecessor, 47 E. 3.23. 40 E. 3.16. 9 E. 4.41. 47 E. 3.23. If the Heir be to bring Debt, it shall be in the Detinet.

Rex Vic. Surr. salutem. Præcipimus tibi, quod Justicies A. Infraquod juste & sine dilations redd. B. 205. quos ei debet ut dic. p. 340: sicut rationabilit.monstrare potest, quod ei redd.debet.ne amplius inde clamorem audiamus pro desettu justitiæ. & c. Teste, & c.

And if the Writ of Debt be for other Goods or Chattels than money, then the writ of Debt shall be such:

Rex Vic. &c. Præcipimus tibi, quod just. A. &c. quod redd. B. quendam librum, vel quendam typhum, vel quendam equum, vel duos agnos pretii, &c. quem vel quos vel quæ ei injuste detinet sicut, &c.

And if Writ of the Debt be brought in the County before the Sheriff by Justices, the Plaintiff may remove the Plea unto the Common Pleas by a Pone without shewing cause in the writ: but the Desendant shall not remove the Plea out of the County without shewing cause in the Pone, and yet in the end of the writ, it shall be said. First execut isting brevis, secausa sit vera, aliter non. And the causes wherefore the Desendant may remove the Plea, are many, as appeareth in the Register. One, if the Desendant plead a forreign Plea, which cannot be tried in the County, &c. Or if the Desendant shew that he before whom the Plea is depending, doth maintain the Plaintiff, or savour him, &c.

And if the Plea of debt be fied within any Liberty, or Court of any Borough or City,&c. the Plaintiff may remove the Plea by a Recordare into the Common Pleas without flewing any cause in the writ. But if the Defendant sue to remove the Plea by a Recordare into the Common Pleas, out

of any Town or City, he ought to shew cause in the writ, as before is faid. And if the Sheriff remove the Plea out of the Court by a Pone at the fuit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment and award Execution, &c. then the Defendant, or he against whom the Judgment is given, and Execution awarded, shall have an attachment against the Bailiffs, or those who so proceeded to Judgment, &c. to answer as well the King for the contempt, as the party his damages, &c.And the form of the Writ of Debt in the Common Pleasis:

Rex Vic. &c. Pracip. A. quod jufte, &c. redd. B.C.s. quos ei L debet & injufte detinet ut dicit. Et nist fecerit, & prad. B.

fecerit, &c. tunc fum. per bonos fum. præd. A. &c.

And the rule in the Register is, Quod in brevi de debito de M catallis nunquam dicit. quod ei debet. And if the Debt be brought by Executors for a Duty due to their Testator, the writ shall be, Quosei detinat, & not Debet et detinet, because they were not parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the writ shall be, Quos ei detinent, &c. and not Debent & detinent, although by the writhe demand money, viz. 20 1. or other fum of money.

If a man make B. and a Monk his Executors, and is indebted A unto another, the Action of debt shall be brought against B. and the Abbot and the Monk, and the form of the Writ fhall be fuch:

Præcip.B.execut.testamenti S. & Abbati de C. & frat. A.de C. concanonico ejusd. Abbat. de C. coexecut. præd. B. testamenti præd. 20 1. And if they bring an act, the Writ shall be: Pracip. D. & c.quod redd. B. execut. testamenti S. & Abbat de C. fratri A.de C.concanon. ejufdem Abbat.de C. coexecut. prad. B. testamenti pradict.

action 75. And if a man be bound unto B. and an Abbot in 20 l. and B threstine arriver, ve. 16. B. dieth, his Executors and the Abbot shall joyn in the action H.7.8. Keble. of Debt, and the Writ shall be such:

A Leafe for Pracip. C. &c. quod jufte, &c, redd. B. M. execut. teftamenti years to a R. & Abb. de C. 101. &c. quas, &c. Et nifi, &c. & prad. exe-

fecular man cut. et Abb. fecerint te, &c. and an Ab-

And if a writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the writ shall be such: Pracip. hold See 15 A. de S. fil. et hær. B. quod redd. &c.

Eliz. Pow. And if there be divers Heirs, then the Writ shall be: C 441. liter- Pracip. A. de S. fratriet uni hared. B. et B. consanguineo et

dent. 171. alteri hæred. ejufdem B. &c. ie the heir of

And if a man be in debt, and die intestate, or the Execu-D lis the heir shall . be charged, tors 1 efuse to be Executors, for which the goods come to the hands

29 H. 8.8.

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hands of the Ordinary, the Creditors shall have an action of Debt against the Ordinary by the Statute of West. 2. cap. 19. and the Writ shall be such :

Pracip. A. Episcopo Lincoln. ad cujus manum bona et catalla que fuer. B. qui obiit intestatus, ut dic. devener. quod juste, &c.

redd. &c.

And if the Goods come unto the hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an action of Debt against the Executors of the Ordinary, and the Writ shall be such:

Præcip. A. de B. et C. de T. execut. testamenti magistri R. de P. nuper Decani Ecclesia beati Petri Eborac.et custod. piritualitatis Archiepifc. Eborac. sede vacante, ad cujus manus bona et catalla que fuer E. de B. qui obiit intestat . ut dicitur, devenerunt, quod juste, &c. redd. &c.

And it appeareth by the Register, that in Anno 16 E. 2. the Plaintiff was answered unto such writ which he brought

against the Executors of the Ordinary.

And there is a Writ of Debt in the Register for the Ordi- 14 H. 4-30. nary, against him who was indebted unto him who died fo against intestate. But the opinion of the Sages of the Law at this the opinion. day is, That the Ordinary shall not have an action of Debt alries. against those who were indebted to the Intestate, because the action is given to the Administrator, and the Ordinary may commitadministration of the Goods when he pleaseth. But before the Statute of 31 E. 3. cap. 11. the Administrators could not have an action of Debt against the Debtors, wherefore it was then thought reason, that some person should have the action for those debts, &c. But the Ordinary at this day may have an action of Trespass for taking of the goods out of his own possession, but not for taking them out of his possession who died intestate as Administrators may have. If a man be retained in England to do Service beyond Sea,

receiving 10 l. per an. he shall have an action of Debt in Eng-

land where the retainer was.

If a man married a woman who is in debt to divers per- 48 E.3.1. fons, the husband and wife shall be fued for these debts, living the wife:but if the wife die, the husband shall not be charged for the debtafter the death of the wife, if the Creditor of the husband and wife do not recover the debt during the coverture, which was due by the wife before the coverture: for then, although the wife dieth, yet the Husband shall be charged for that Debt by that recovery after the death of thewife.

A man shall be charged in debt for the Contract of his 2 R.2. Fitz. Bailiff or Servant, where he giveth authority unto his Bailiff Dett. 3.

or Servant, to buy and fell for him: and fo for the Contract of the wife, if he give fuch authority to his wife, otherwife not.

If a man lease Lands for years rendring Rent, and for de- H fault of payment, that he shall re-enter; if he do re-enter in the Land for not payment of the Rent, yet he may have an 17 E.3.48. action of Debt for the Rent, for which he doth re-enter, 18 E.3.Debt and in the Writ shall recover the Rent, for which he re-

6.36 E.3.7. entred. Debt 10.

If a man bind him and his Heirs unto another in 201. I 14 E.3. Debt and dieth, the Heir shall be charged to pay the same, if he 135: A man have Lands by descent in Fee simple from his Ancestors, was bound otherwise not. But if a man be bounden in an Obligation to one and his heirs, and to one and his Heirs, and the Obligee dieth, his Heir hall not have an action of Debt upon the Obligation, but his holden the heir should Executors. not have

debt living the Executors. 9 H.6. 58. the heir shall not have Detinue for a deed bailed by his Father. 19 H.6.4. 48 E.3.12. it is faid that if the Ordinary do not commit administration, the heir shall have Debt.

19 H.2.Debt If a man promise to one 20 l. to marry his daughter, and K 166. 45 E.3. he marrieth her, he shall have an action of Debt against 24.ac.if it be him upon that purpose, H.31 E.3.

If a Parson have an annuity in Fee in the right of his L 15 E.4.32. cont. per Cur. Church, and the annuity is behind, and the Parson dieth, 37 H.6.8. his Executors shall have debt for the arrearages of the an-

ac.21.H.7.5. nuity in the life of the Testator.

If a man grant to one a Rent in Fee, and further grant, M 7 H.6.19. that if the Rent be behind, &c. that he shall forfeit for a pe-11 H.5.95. Thrining and nalty 40s to the Grantee and his Heirs. If the Rent be arrear, Skrene, that the Grantee shall have debt for the penalty. And so the he may di- Heir shall have the penalty, and shall have debt for the same, ftrain for because it is as Inheritance, and perhaps may continue, &c.

the penalty, If a man be condemned in debt or damages, and be com- A quoa non est lex. But note, mitted unto prison for the same; if the Gaoler suffer him that if a man to go at liberty, or he escape out of prison, the Gaoler shall be in prifon be chargeable in debt to him at whose suit he was impriso-

by Capias ad ned, and his Executors. Computand.

and after escape, no Debt, but action upon the Case, because he is not in prison for any duty. b. Choh & Tigot 1, 5 E.4.19, 16 E.4.2, & 3.

If a man lend another man a Horse until a certain day, and B then he to redeliver the Horse or 101. at the same day, after 50 E.3.16. the day if the Horse be not delivered, it is in his election

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to bring an action of debt for the Horse in the Detinet, or an action of Debt for the 10 l. in the Debet.

If a man maketh a Leafe for life unto a woman, rendring 26 E.3, 64. Rent, if he marry, and after the Rent is behind, and the wife 10 H.6.11. dieth, the husband shall be charged in an action of Debt 9 H. 6.29. for the Rent behind, because he took the profits of the Lands by region of his wife. Otherwise is it of an Obligation made 20 H.6 45. by his wife before marriage, then the Husband shall not be Ascough. charged, if a recovery be not against him and his wife in the 49 E.3.25. life of the wife.

If a woman be endowed of a Rent, and afterwards taketh Ve 14 H. 6. husband, and the Rent is arrear, and the wife dieth, the hus 26. 10 H.6. band shall have an action of Debt for the Rent, because it 11. was a duty in him during the marriage. But if a man be bounden unto a woman, and she taketh Husband, and the day of payment cometh during the marriage, and after the wife dieth, the Husband shall not have an action of Debt upon the Bond, because it was a duty due unto the wife, and a thing in action before the marriage.

If a Parson have an annuity in Fee, and the same is be- Quale for hind, and the Parson doth refign, yet he shall have an action fine and

of Debt for the arrearages before the refignation.

And if a man lease a Mannor for life, and the Rent is behind, which the Tenants who held of the Mannor are to pay, and the Lessee for life of the Mannor dieth, his Executors shall have Debt for the arrearages of the Rent due by the Tenants of the Mannor.

And so if the Tenant for life of the Mannor, surrender his Estate to him in the reversion of the Mannor, yet he shall have Debt against the Tenants of the Mannor for the ar-

rearages before.

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If a man have a Patent from the King to have a certain fum for term of years or for life out of the Customs of London, and thereupon he have a Libertate to the Customer to 37 H.6.25: pay him, which he delivereth to the Customer, at which If a Libertate time the Customer hath enough in hands to pay him, now by the delivery of the Libertate and the Assets in the hands or other of the Customer, the Customer is debtor unto him, and he Collectors shall upon this matter have a debt against him.

that will fatisfie that

Nenten Com.

they shall be discharged against all others: 27 H. 6.9.ac. 21 H.6.Debt 43.

If two fubmit themselves to an award, and the Arbitrators award, that one shall pay the other 10 l. he shall have an action of Debt upon that arbitrement. If

## Writ of Debt.

If an Abbot hath an annuity in Fee, and the same is be- H hind, he shall not have an action of Debt for the arrearages, 37 H.6.35.

because the annuity continueth.

Neither shall a Parson have an action of Debt for the ar- I rearages of an annuity, which he hath in Fee during the time that he is Parson: but if he refign, he shall, or if he dieth, his Executor shall have an action of Debt for the fame. And if a man who is Bayliff do accompt before Auditors, and it is found that he hath expended more than he hath received, for the surplusage he shall have an action of Debt against the Lord whose Bayliff he was. But if a Receiver account, and is found in furplufage, many fay that he shall not have an action of Debt for the same, because he is bounhot den to lay out any parcel thereof: but it seemeth if he do it by the command of the Lord, that then it is reason that he

41 E.3. Debt have an action of debt against the Lord for the surplusage. An Abbot shall be charged in an action of Debt upon a K 3 E.4 26.the Loan of mony made unto his Predecessor, if the mony came

general, and to the use of the House.

An Attorney shall have an action of Debt against his Clyent L the Count for mony which he hath paid unto any person for his Clyent, special. 20 H.6.21. for costs of Suit, or unto his Council, &c.

If a man contract to pay mony for a thing which he hath M Nenton. 28 H.6.4.59 bought; if he make a Bond for the mony, the Contract is H.8.22.ac. 1 discharged, and he shall not have an action of Debt upon H. 6.8. per the Contract. Tabington.

9E.4.20.and fo 10 H.7.21, and 24. 22 H.6.16. 21 H.7.5. Carter 3 H.4.17.

If a man make a Lease for years, rendring Rent of Lands N devisable by will, and afterwards deviseth the reversion of 5 H.7.18.ac. the same Lands unto a stranger in Fee, the Devisee shall to Lord by escheat of a have an action of Debt for the Rent reserved, without any attornment of the Tenant for years. But if the Lessor hath reversion. granted the reversion by fine or deed, the Grantee shall not have an action of Debt without attornment of the Lessee for the Rent referved.

If a man be indebted, and entreth into Religion, his Ex- O 4 E.4.25. Danby 5 H. ecutors shall be sued for the debt, and not the Abbot who

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7.24.Brian, accepted him into Religion.

1; H.4.Debt If a man be condemned in Trespass, or in Debt upon a P 167. 5 H.5. Eond, where he denieth his deed, and afterwards he is taken 7 H.6.5.1 H. by a Capias pro fine at the Kings Suit within the year, and 6. Debt 26. committed to prison; if the Gaoler suffer him to escape, he 7 H.44.4 E. shall have an action of Debt against the Gaoler: yet he was 4.15.21 E.4 not committed to prison at his suit, but at the Kings suit. 67.

38 H.6.5. 7 H.4.3.

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But within the year after the condemnation and Judgment, 7 H.4.14. 4 the fuit for the King shall serve as well for the Party as the E.4. 16. 22 Ring, because the King was intituled to it by the Party, but Aff. 74.21 E. after not: for it shall be intended that the Party is agreed 4.67. 14 H. 7.15,19,20, with him who is condemned, and therefore after the year he 1.1 H.4.44. Shall be put to his Scire sacias upon the Judgment.

If a man leaseth Lands for term of years rendring Rent, [122] and afterwards the Rent is behind, and the Lessee surrender of E.3.7. Debt eth his term, yet the Lesso shall have an action of Debt for 149.19 H.6. the arrearages before, as it seemeth by P.38 E.3. tamen quare, Debt 143.

for the opinion is contrary to 2 H.6.

If a Servant will not do his Service, by the Statute of 24 7 H.6.2.

E.3. cap.9. he shall be arrested and committed to the Gaol, and if the Gaoler set him at large, he shall lose 10 sto the King, and 5 sto the Party. Now if the Gaoler set such Prisoner at large, the Party who would have him detained, shall have an action of Debt against the Gaoler.

If a man recover damages in an action of waste, he may 43 E.3.2.

have an action of Debt upon the recovery if he will.

And so a man may have an action of Debt upon a Statute 3 E. 4 27.

Merchant or Staple, or upon a Recognizance, or may have quar, 43 E.

execution according to the Statute at his pleasure.

A Prior did recover an annuity in Fee against a Parson and afterwards he such a Scire facias against the Parson, and did recover in the Scire facias the arrearages of the annuity, and afterwards he brought an action of Debt against the Parson upon the Recovery in the Scire facias for the arrearages, and it was maintainable.

An Abbot shall be charged in an action of Debt for Vi- 26 E.3.55.
Chuals, or other necessary things bought by the Eutler, or Debt 165.
other Officer who is deputed to make Purveyance for the

Abby in time of vacation.

G If a man levy aid of his Tenants for the marriage of his daughter and dieth, the daughter not married, the daughter North. Fizz. shall have an action of Debt against the Executors of her Debt 57. Father for the aid levied; and if the Executors have not any thing, she shall have an action of Debt against the Heir See \$2 I.ac. for that aid, if he have any thing by descent.

If two Coparceners make partition, and one granteth or 30 E.3. Debt promifeth unto the other accretain fum of mony for the e- 131.

quality of the partition, she shall have an action of Debt

upon this promife, and shall recover the mony

If a man make a Tally, and make a Bond thereupon, and 12.R.2.Debt
Seal and deliver it as his Deed: yet it shall not bind him, 44 E.3.21.
but he may plead against the same, that he owed him no- 9 H 5.24.

for another by word, it fiall not make him Debtor, if not by the cuftom of London.

If a man be- thing, or wage his Law. For an Obligation ought to be come debtor made in writing in Parchment or Paper, and not written upon any piece of wood, as a Tally is.

And a man shall have an action of Debt against him who becometh pledge for another upon his promife to pay the money, without any writing made thereof, qd. ve. in title pledge acquittand. P. 43. E. 31.

#### Writ de Rationabili parte Bonorum.

harh two Sons, and maketh one of them his Executor. Quere it he fhall have any part as Son, because · L he is Executor, and hath advancement by

If the father THis Writ lieth where the Wife after the death of her L Husband, cannot have the third part of her Husbands goods after the debts are paid, and Funeral expences performed: for then the may have this Writ against Executors of her Husband: and it seemeth by the Statute of Magna Charta, cap. 18. that this was the Common Law of the Realm; and so it appeareth by Glanvil, that it is the Common Law, that after the debts paid, the goods shall be divided into three parts: one part for the wife, another part for Sons and Daughters, and the third unto the Executors: but yet the Writs in the Register rehearse the Customs of the Counties, and are of this form.

that. A Woman did demand the moiety of her husbands goods, because he had no children, and counted upon the custom of the Realm, 31 E.3. But 21 H.6.1, and 2. seemeth, it is by Custom, and not by the Law of the Land. 7 E, 4. 20. ac. M, 18, and 19. Elsz. in B. R. A Writ was brought and allowed there, notwithstanding that exception was taken at it, that it was maintainable by special Custom in London, 1 E.4.5. Pilling, ac.

30 H. 6. Respondr. 95. A woman brought the Writ for the moity, and counted upon the Cuftom not speaking of any Town, or that it was the Cuftom of the Realm, 28 H.6.4. 40 E.38. 3 E. 3. Dett. 1 56. Counts by the Custom of the Town of Northampion. 17 E. 99 and 76, that it is by the Common Law. 7 E. 4, 20. Exception was taken, because he did not count that the Custom did continue.

> Rex Vic. &c. Si A. que fuit uxor B. &c. fecerit, &c. tune sum.C. et D. execut. testamen. prædict. B. qd. fint, &c. oftenf. quare cum secund. conf. in com. præd. bacten. obtentam, uxores post mortem viror. Suor. habere debeant rationabilem partem suam de bonis et catall. viror. suor. præd. iidem execut.præfat. A. rationabilem partem suam ad valentiam 10. marcar. de bonis & catall. que fuer. pred. B. quondam viri sui detinent, minus juste, et ea eireddere contradicunt, in ipsius A. damnum non modicum & gravamen, et contra consuetud. præd. et habeas ibi sum. et has breve des.

Je hirst I righthely f: 176: 6: my la Cake yof And opinion that they writ is by custom:

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And the like Writ the Sons and Daughters may have 2 E. 2. Fitz. Detinue ,61 against the Executors; and the Form is, 30 E. ibid.

52. And fee 31 H. 8 it hath oftentimes been put in ure as Common Law, and never demurred upon.

Rex, &c. quia A.de N.et S. soror ejus fecerunt nos fecur. &c. sum. &c. I.de H.et E.exec.testament. R. de N.qd sint, &c. oftens. quare cum secund. consuetud.in com. prædict. hactenus obtentam et appro- is no adbatam pueri post mortem patrum suorum, qui eorum hæred non junt, if the Fanec in vita patrum suorum promoti fuer habere debeant rationabi- there goods les partes suas de bonis et catall.quæ fuer.patrum suor.præd.iidem be not given exec.pr.ef. A, de N.et S.post mortem præd.R.patris sui cujus hered. in his life, ipsi non sunt, nec qui in vita ejusaem patris sui, promoti fuer. ra- for iffue was tionabiles partes suas ad valenc. decem librar. &c. ut supra.

taken thereupon.

Secta ad Molendinum.

3 E. 3. Dett. 156.

M CEsta ad Molendinum lieth, where a man by an usage time Quare If a out of mind, &c. hath used to grind his Corn at the man may Mill of B. and afterwards he goeth unto another Mill, and create a Tewithdraweth his suit from B. Mill, then may he have this day upon a Writ. And also it seemeth that the Lord may have this girt in tail, Writ against his free-Tenants who hold of him to do suit at or such ehis Mill, and yet he may diffrain his Tenants for the fuit, flate, P.20. and avow for the same.

And by Prescription a man may have suit to his Mill; of Leafe was the villeins of a stranger, and have sectam ad molendinum life of parcel against them, and that it seemeth by reason of their residence of the dein certain which they dwell upon. And this Writ is some- means dotimes Vicontiel, and shall be fued in the County by a Writing suit to of Justicies, at the Plaintiffs pleasure, or in the Common his mill and Pleas by a Pracipe, &c, and the Form of the Writ in the good.

County is fuch: Rex Vic. &c. Præcipimus tibi, quod Justicies A. qd. juste Note, that et sine dilation. fac. sectam suam ad molendinum E. de N. in C. Tenant for quam ad illud debet et solet, ut dic. sicut rationabilit. monstrare Life of a poterit, quod eam ad illud facere debet, ne amplius inde clamo- Mannor rem audiamus pro defectu justitiæ. Teste, O.c.

Writ, because it is in the Dobes & folet, 20 Eliz. Dyer. Br. note 127,123. Curia Claudenda lieth for Tenant for life, and yet the Writ is, Debet & foler.

And if the Writ be fued in the Common Pleas, the Writ shall be thus:

Præcip.A. quod juste et sine dilatione saciat sectam ad molendinum E. de N.in C.quam ad illud facere debet et folet,ut dicitur,et And nifi fecerit, orc. tunc fum.o.c.

And by the Rule in the Register, a man shall have a writ of Seita, &c. quod faciat fectam ad furnum, et ad thorale, et ad B omnia alia huju (modi. And Tenant for life, or in Dower, may maintain this Writ in the Debet et folet, for this is of the nature of a Writ of the possession: but in the Debet only, feemeth to be in the meer right. And the Defendant shall have the viewing Setta ad molendinum in the Debet et folet of C Land, &c. of the Mill in which the fuit is to be done. the process in a Secta ad molendinum shall be summons, attachment, and diffress, &c. and if he do appear after default, D then shall issue a Distring as ad audiendum Judicium, and yet he may fue his default. And you may fee the form of the Court in this Writ, in the Book of Entries, where he counteth E. upon a Tenure of Land, &c. and another Count, where he counteth upon prescription: S. that the Tenant, and all those which held those Lands, have used to do their suit at his Mill, quod ve. f. 169.

#### Quod permittat.

Glak he: Oud permittat lieth, where a man hath Common of passure F you have me he cannot use his Common, then shall he have this Writtand this Writtand this Writtand this Writtand this Writtand this Writtand Common Pleas; and the form of the Writ is,

H.S. 12. Rex Vic. & Præcipimus tibi, quod Justicies A. qd. juste, of permittat B. hæred. Communiam pasturæ in N. ad centum 134/: 6: oves, & vel ad centum boves, & quam habere debet, ut dicitur, sicut rationabiliter, & c. ne amplius inde clamorem audiamus. Vel sic: Communiam pasturæ in terra ipsius A. quam in ea habere debet, & c. Vel sic: Quod permittat A. habere Communiam pasturæ in centum aris ipsius A.

Ve.2,H.4,
13. View is claimed in the Land of any person certain, then the certain grantable in number of Cattel are not put in the Writ, yet it is said the Quad permittat sued in the Common Pleas is such:

3 E. 3, that the defend cannot vouch in a Q and permittat, for that it is not a Pracipe quod reddat, Ve. 45. E. 3, 2. in the view.

Rex Vis. &c. Pres. A. qd. juste; &c. permittat B. habere Communiam pasturæ in N. et 40 acr. bosci, quam habere debet, ut dicit. Et nest secrett, et prædict. R. secret te, &c. tunc sum. &c.

And another form of the Writ for common append. thus:

Rex Vic. &c. Prac. A quod juste, &c. permittat B habere Note, This Commaniam pasturæ in N, quæ pertinet ad liberum tenementum Writ is in suum in eadem villa, vel in alia villa, de qua idem A vel pater the nature of suum in eadem villa, vel in alia villa, de qua idem A vel pater the nature of præd' A cujus hares ipseest, injuste & sine judicio diffeist. R Entry upon patrem pred.B cujus heres ipfe eft, post primam transfretationem a diffeifin Dom. Henr. Regis fil. Regis Johan. in Vafcon. ut dicitur. Et nifi, &c. made to his

And the Rule in the Register is, That the Writ of Quod Ancestor, permittat lieth of Common of pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a disseisin made to the Plaintiff of his ancestors, by him and his ancestors, and not in other degrees, because he ought to have a Writ of Right in the Debet & folet.

But an Abbot may have a Writ of Quod permittat of a diffeifin made unto his Predeceffor, and shall make mention

of the diffeifin in his Writ.

And the form of the Writ de libera piscaria is such: Rex, &c. Prac.A. &c. qd. &c. permittat B. habere liberam piscariam in aqua ipsius A in N. Vel sic, in aqua in N quam in ea habere debet & solet, ut dicit. Et nisi, &c.

There is another form of the Writ of Quod permittat, in

the nature of Mortdauncester, and is such :

Rex, &c. Prac. A quod, &c. permittat B hared. Com. paftur. in N, in qua C pater, vel mater, vel soror ipsius B, cujus hares 3 E.25. Qued ipfe eft, fuit feit. ut de feodo tanquam pertin. ad liberum tene- permu.1. mentum suum in eadem villa die quo obiit,ut dicit. & nisi,&c.

And if it be a Common in gross, then he ought to pur this Clause in the Writ, tanguam pertinens ad liberum tenementum suum, &c.

And foa Parson or an Abbot shall have a Quod permittat

of the feifin of his Predecessor, and the Writ shall say, Præc. &c. qd. permittat B parsonam Ecclesia de C habere Permittat 8. Com. pasturæ in N, de qua F quondam parsona de C præd. &c. 30 E.3.3. fuit feifit. ut de jure Ecclefie fue præd' die quo obiit , ut dicit. 4. A Pre-Et nifi, oc.

And the Rule in the Register is, That in the same man- the Writ for ner as is faid before of Common of pasture, so may it be mishering a faid of all other Commons, as of Turbary, Pifcary, &c.

And there are divers other Writs of Quod permittat of another nature; as a man shall have a Quod permittat against the Lord, to fuffer his villains to do fuit to his Mill, &c. and that accrueth by usage and prescription, and the Writ is:

Rex, &c. Pracipe A quod juste & fine dilatione permittat villanos suos de C facere sectam ad molendinum B, &c. in E,&c. O nifi, Oc. Et prædict. B fecerit, &c. tune fum. Oc.

. 3 I E.3. Quod bend had

water in the time of his predeceffor.

If the Miller then Trefpass lieth: But if the Tenant of takeir, a Quod perm::::41. 41 E.3.24. X44 E.3.4c.

Ve t.E.I.

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4 E.3.48.

Quod per-

mitta: 7.

And another Writ: Pracipe A quod permittat B molere taketh Toll, dominicum bladum suum de N, ad molendinum ipsius A in N quietum de multurum, quod ad idem molendinum molere debet et folet ut dicit. Et nift, oc. Vel, Pracite A, oc. quod permittat Bhaurire aquam ad fontem ipfius A in N, ficut ad illum hauthe Freehold rire debet et folet ut dicit; et nifi, &c. Vel, Quod permittat B adaquare gregem suum ad aquam ipsius A in N, sicut illam adaquare debet et folet , ut dicit ; Vel, Quod permittat Bhabere liberum taurum fuum in N, ficut habere debet et folet, ut dicit; Vel, Quod permittat B habere quoddam chimnum ultra terram iplius A in N,&c. Vel, Quod permittat B habere liberam faldam fuam in dominicis terris fuis in I, quam babere debet & folet. Vel, Quod permittat habere liberam piscariam in aqua ipfius A

in N,&c. Vel, Quod permittat habere liberum paffagium ultra Bt. Battaile aquam de Humbr. in navi ipsius A, quod in ea habere debet et 13 fex. Quod folet ut dicit, oc. et nifi, oc. Buta man shall not have a Quod permittat de rationabilibus estoveriis in bosco, vel in turbaria, 9. a Quod vel in bruera, et similibus. brought of

And the like by the Rule in the Register, for in lieu thereof is given the Writ of Affife of Novel Diffeifin by the

Statute of west. 2. cap. 26.

And a man shall have aWrit, Quod permittat erigere Scalas in solo ipsius Bin L mans. ipsius contiguo, pro domibus suis ibidem quoties fuerit opus cooperiend.et reparand. ficut erigere debet

et folet, ut dic. & nifi,&c.

And a man may have a Writ of Quod permittat of a Corrodie; as, Pracipe P Priori, &c. quod permittat B habere Sustantation. competent. pro se & uno garcione in victu & vestituset omnibus aliis necessariis, ac pro uno equo in victu singulis diebus, ac etiam sustentationem competent. pro quatuor hominibus de com. ejusdem B, quatuor garcionibus, 4 equis, 4 leporariis, et 4 esperveriis singulis An. ad festa Natalis Domini Pasch. Pent. & omnium Sanctorum, & per 3 dies post quodlibet festor. predict. in Prioratu de C, &c. de qua E quondam Prior loci predicti injuste, &c. diff. F patrem prædicti B, cujus bæres ipfe eft post primam transfretationem, oc.

And in Quod permittat habere chiminum, in the nature of 30 E.t. Qued the Writ of Right, and to hold fuit, and dereign the warpermutat Io. rant,&c. and the Defendant came and joyned the mife upon

the meer right, and was received. Br. Battaile

And in a Onod permittat by a Parlon, he counted de fec. B & droit, and held fuit, and dereign, &c. and the Tenant came and gaged battail,&c. tempore Regis, E.I.

And Tenant in Tail shall have a Quod permittat. And in a Quod permittat of a Common the Tenant al- C ledged

ledged the darrein seisin in the Plaintiff, and it was adjudged a good plea to abate the Writ. But there the Plaintiff counted of the seisin of his Ancestor; For a man shall have a Quod permittat of his own seifin, as it seemeth.

And a Quod permittat ipfum reducer. curfam aqua, &c. which 2 H.4.13.46.

is misturned, will well lie.

And a man shall have a Quod permittat against the Tenant of the Freehold for an act done, or a disturbance done by

a stranger who was not Tenant of the soil.

And the Process in a Quod permittat is Summons, Attachment and Diftres: And if the Sheriff at the Summons return 30 E.33. Nihil, the Plaintiff may pray a capias and have it, Quod vide H.39 E.2.

And the form of a Count in a Quod permittat appears in

the book of Entries fol.80. on the first fide.

And if a man build a house, or a wall, or other thing which is a Nusance unto the Freehold of another, and dieth; he to whose Nusance it is shall have a Writ of Quod permittat against his heir that did the Nusance, and the Writ is fuch:

Rex Vic', &c. Pracipe A quod jufte, &c. permittat B profterner. quandam domum, vel quendam murum, vel quandam sepem vel quoddam molend. vel foffatum, quem quam vel quod R pater vel alius antecessor. prædict. A cujus hæres ipse est, injuste & fine Judicio levavit ad nocumentum liberi tenement C patris vel alterius antec. præd. A cujus hæres ipse est in eadem villa vel in alia, post primam, &c. ut dicit. & nisi fecerit, &c. Vel fic, Quod permittat Bexaltare, vel deexaltare quoddam stagnum in L, quod prædict. A injuste levavit, vel deexaltavit, ad nocument.liber. tenementi sui, vel C patris prædicti B, &c. Et fic, Quod juste, &c. permittat B reducere cursum cujusdam aque in L in rectum & antiquum cursum suum, quem C mater prædict. A cujus hæres ipse est, divertit, ad nocumentum, &c. Vel fic, Quod jufte, &c. permittat B deobstruere quandam viam in N, quam C pat. præd' A cujus hæres ipfe eft injufte obstruxit, oc.

And if a man levy a Nusance unto the Freehold of another, and he to whom the Nusance is done maketh a Feofment in fee of the Land; and he who did the Nusance maketh a Feofment of the Land in which the Nusance is ; yet there is a Writ in the Register for the Feoffee of him to whom the Nusance was levied against the Feoffee of the other, to reform that Nusance, and the Writ is such:

Rex Vic. &c. Præcipe B quod juste, &c. permittat B dearttatam quandam viam in N, quam C injufte & fine judicio

arctavit, oc.

[125] Or Bailiwick

Demand.43.

Eut this Writ is not given by the Statute, but may fue, &c. by the Statute, west. 2.in Casu Consimili, &c. c. 24.

And a Quod permittat of a Fair or Market shall be sued A

Or Bailiwick in the Common Pleas; and the Writ is such:

Rex Vic', &c. Si A fecerit,&c.tunc sum. B,&c. quod sit coram fusitic nostrus, ostens, quare levavit quod.Mercatum, vel, quandam Feriam in I ad nocumentum liberi mercati, vel, libera Feriae ipsius A in eadem villa, vel, in alia post primam, &c. ut dicit. Et babeas ibi summon.&c.

And the like Writ for the Heir where the Father doth levy the Market or Fair unto the Nufance of another Fair or Market; or for the Heir against him who levieth the

Nusance,&c.

## Writ of Admeasurement of Pasture.

The Writ of Admeasurement of Pasture lieth betwixt B Commoners who have Common appendant to their Freeholds, if one of themsurcharge the Common by putting in more Cattel in the Common than he ought to have Common for there, then that Commoner who is grieved shall have this Writ of admeasurement of pasture; and by this state all the Commoners shall be admeasured, as well those who have not surcharged the Common, as he who hath surcharged it, and he who bringeth the Action shall be also admeasured.

8 H.6.26.

View in his And the Writ is Vicontiel, and shall be directed unto the C
Action. 3 H. Sheriff, and shall not be returnable; and the form of the
6.26. You- Writ is such:

Action. 3 H. 6.26. Voucher; also 32 E.3. Voucher

Note, this

Rex Vic. &c. Questus est nobis A, quod B, & C uxor ejus injuste superoneraverunt communiam pasturæ suæ in N, ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum: Et ideo tibi præcipimus, quod juste & sine dilatione admens. sac. pasturam illam, ita quod præd. B & C non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenementum suum, quod habent in eadem villa. Et quod præd' A habeat in pastura illa tot animalia & pecora, quot habere debet, & ad ipsum pertinet habendum, ne amplius inde clam. audiamus.

Writ is vicontiel, and the Suters are the Judges by 7 E.4.23. 18 E.3. admeasurement 7. a morable case.

And if the Tenant furcharge the Common with his Cattel, &c. the Lord shall not have the Writ of admeasurement against the Tenant; but it seemeth the Lord may distrain the surplusage of the Cattel damage seasant. And some say, That the Lord may have an Assize against the Tenant for the surcharge, for that he is disturbed of the profit of his Land. Quarte of these Cases. But But if the Lord furcharge the Common, the Tenant shall 18 E.2.20, not have a Writ of admeasurement against the Lord, but he shall have an Assize of Common against the Lord

And foif the Lord do make approvement of the Common unto himself, and do not leave sufficient Common to 126, D.E. the Tenant, the Tenant shall have an Affize, and not a Writ of admeasurement. And he who hath Common appurtenant certain or Common by grant certain shall be admeasured; And a Tenant shall have an admeasurement against him; But he who hath a Common appurtenant without number, or Common in gross without number, shall not be stinted, nor a Writ of admeasurement doth not lie against him.

And in the time of E. 1. it was agreed, That one neighbour shall have a Writ of admeasurement against another where they enter common, by reason of Neighbourhood.

And if the Sheriff will not make the admeasurement, he shall have an Alias and Pluries, vel causam Nobis significes. And if he do not return the Pluries, he shall have attachment against the Sheriff. And the plea may be removed out of the County by a Pone at the suit of the Plaintiff without shewing cause in the Writ, but at the suit of the Desend. he ought to shew cause in the Writ; and the writ of Pone is such:

Pone ad petitionem petentis coram Justic. Ectali die loquelam que est in Com. uo. per breve nostrum inter A & B de com. pastura in N admensuranda, & sum. Sc. pr.ed. B quod tunc sit ibi pr.es. A inde responsurus, &c. & habeas, &c. hoc breve, & aliud breve.

And upon this Writ of admeasurement, the Plaintiff 7 E 4.22. Shall enter his plaint in the County before the Sheriff, as he shall do in a Replevin sued by Writ, and upon that the Sheriff shall make a Warrant against the Defendant, &c. and warn him to appear; and if he come and plead nothing in bar, or grant it, then the Sheriff shall make the admeasurement.

In a Writ of admeasurement brought against one of Common in D, the Desendant said that he had Lands in B and S, to which he had Common in the said place, and yet the Writ good, for it is holden there that the outer of the furcharge shall not be but in the same place only, yet it seemeth all the Common shall be admeasured, Temp. E. 1. Admeas 15.

But if the Defendant shew cause unto the Sheriff wherefore the admeasurement should not be made, then the Sheriff ought not to make admeasurement upon this Writ; but the Plaintiff ought to remove the plea by a *Pone* into the

Com-

Common Pleas, by which Pone the Defendant shall have day for to appear, &c. And if he appear not, then shall issue a Distring as directed to the Sherist to distrain the parry, and such day shall be given by that Writ, that two Counties may be kept between the date of the Writ and the return, and in the Counties Proclamation shall be made, that he come and shew cause why the admeasurement should not be made. And if he do not come at the return of the Distring as, then a Writ shall be awarded unto the Sherist to make the admeasurement by his default; and that is given by the Statute of West. 2.cap. 8. and the Writ is:

Rex Vic. &c. Cum A nuper nobis questus est quod B & C injuste superoneraverunt communiampasture sue in N, ita quod in ea plura habent animalia & pecora quam habere debent & ad ipfos pertinent babendum: Per quod tibi præcepimus, quod juste & fine ditatione admensurari facer. pasturam illam , ita quod prædict. B & C non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinent habendum secundum liberum tenementum suum in eadem villa. Et quod pradiet. A habeat in pastura illa tot animalia & pecor. quot.haber. debet, & ad ipsum pertin. habend. &c. ne amplius, &c. ac tu nibil inde feceris, ficut ex querela ipfius A accepimus, cumque in brevi nostro de admensura.pastur. statuerimus quod post magn. distriction.dentur dies infra quos duo Com. teneant.ad quos proclametur, quod reus veniat actori respondere. Ad quem diem si non venerit, fiat admensur, per defaltam : Tibi bræcipimus, sicut alias tibi præceper. quod just. & fine dilatione admensur. fac. pastur. antedict. juxta tenorem alterius brevis nostri tibi inde directi, o juxta formam statut.nostri inde provis. & edit.ne per pr.ef. A, oporteat nos super hoc iteratum solicitari, Teste, &c.

And when the plea is removed by Pone in the Common A. Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant, and see the form of the count in the book of Entries, fol. 128.

And if the Defendant do grant to have the admeasure-B ment, a Writshall issue out to the Sheriff to make admea-

furement, which shall be such:

Rex Vic.&c. Pracipinus tibi, quod assumptis tecum 12,&c. per quos, &c. qui nec, &c. in propria persona tua accedas ad communiam pasturæ admensurandum & per eorum sacramentum admensurandum saccommuniam pasturæ prædist. Ita quod præd. S & C des. non babeant plura, &c. & ad ipso pertinent non habend. secundum liberum tenementum suum, quod habent in eadem villa. Et quod præd. R habeat in pastura illa tot animalia & tecora, quod habere debet, & ad ipsum pertinet habere secundum liberum

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liberum tenementum suum, quod habet in eadem villa, & admen-Surat. quam,&c. scire facias coram Justic. nostris,&c. sub sigilio

tuo, & sigillis corum, &c.

After the Pone returned to remove the plea out of the County, if the Defendant make default at the day of the return of the Writ, then shall issue a Writ to the Sheriff to distrain the Defendant, and in the Writ shall be contained that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the day of the return of the Distring as to answer to the Plaintiff, &c. And if the Sheriff return the Writ ferved; and the Defendant doth not come, then shall issue a Writ to the Sheriff to make the admeasurement.

And it appeareth by the Book of Entries, fol. 128. That See 125.D. a Writ of admeasurement doth not lie against the Lord of

the Soil.

And if a man be once admeasured by a Writ of admea- 18 E.3.20. furement directed unto the Sheriff by the Sheriff, &c. and Admeasureafterwards he furchargeth the Common again, then the ment 7. de. party who fued the first Writ, shall have a Writ to the holden that Sheriff, called a Writ De Secunda Superoneratione; and the it lieth not Writ is fuch :

against the Fcoffee of

the Lord of the part of the demesns, so that the Feossee is in the same degree as the Lord himself. 8 E.2. Admeasurement 14, in admeasurement of Pasture the Defendant faid that the Demandant pendant the Writ had ejected him of the Common, and no plea, for notwithstanding that he had not the Common, he held the Land for which the Common is furcharged.

Rex Vic. &c. Monstravit nobis A quod cum ipse breve nostru nuper, tibi detulisset de communia pasturæ suæ in N admensurandum qua B injuste superoneravit. Et tu pastur. ill. per præceptum nostrum, prout moris est in regno nostro admens. Oc. idem B pasturam illam post admensuram prædictam injuste superoner. in ipfius A dispend. non modicum & gravamen, & contra formam stat. nostri super hoc provis. Et quia eidem A juxta formam ejufdem ftatut. subvenire volumus, ut tenemur : Tibi præcipimus, quod tu in propria persona tua accedas ad pasturam illam, & per sacramentum proborum & legalium hominum de balliva tua, per quos rei veritas melius sciri poterit, de secunda superoneratione ejusdem pasturæ diligenter inquir. Et si per inquisitionem illam pasturam ill. per præf. B post admens. iterum injuste superonerat. inveneris, tunc de averiis illis pastur. ill. ultra debit.numer.post primam admens. positis, vel de pretio illor. nobis respondeas ad Scaccarium, & Superoneration.amoveas Sup. Tefte, Oc.

7 E.4.22.

And it appeareth by this Writ, that a man shall have a F Writ De Superoneratione upon the first Writ of admeasurement of Pasture, which is vicontiel and directed to the Sheriff; if the Sheriff make admeasurement upon that Writ, and afterwards the Defendants furcharge the Common again as well as upon a Writ of admeasurement awarded out of the Common Pleas upon a Judgment there given, &c. But upon the Writ of admeasurement awarded to the Sheriff. by which he maketh admeasurement, if the Defendant surcharge the Common after the Writ of Secundo Superoneratione shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of admeasurement, &c. if the Defendant furcharge the Common, the Writ of Secunda Superoneratione shall be awarded out of the Common Pleas. And the form of the Count in a Writ of admeafurement is fuch:

Et unde prædict querens queritur, quod cum ipse seisit sit de uno mesuage cum pertin. in S, ad quod idem querens habet & habere debet communiam passuræ cum quatuor equis, in centum acris passur. vocat. B quolibet ann. per totum annum pertin. Et præd des, seisit enssitt in dominico suo ut de seod. de quatuor virgat terræ, cum pertin. in eadem villa, ad quas idem desend. habet & habere debet communiam passuræ cum centum equis, & 20 bobus, & c. quolibet ann. per totum annum pertin. præd. desend. injuste superneravit commun. passur, præd. vocat B, ita quod in ea plura habet animalia & pecora quam habere debet, & ad ipsum pertinet habere, unde dècit quod deteriorat. est, & damnu

habet ad 20 li. & petit admenjur.

And by the Writ of Secunda Superoneratione the Plaintiff G shall recover his damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cattel which he put in over the due number after the admeasurement made. And all this is by the Statute of west. 2.1.

8 H.6 26.

And note, That by the Writ of admeasurement all the H Commoners shall be admeasured as well as those who were parties to the Writ. But yet if any of those who are Commoners which were not parties to the Writ of admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forseit their Cattel, nor the value of them that were in the Pasture above the due number, because they were not parties to the first Writ, nor the party shall not recover damages against them for this furcharge in this Writ. For the Writ of Secunda Superoneratione doth not lie but only against him, against whom the first Writ was sued forth.

Writ

# Writ de Reparatione facienda.

A The Writ de Reparatione facienda lieth in divers cases, one is, where there are three Tenants in Common or joynt, or pro indiviso of a Mill or a House, &c. which falls to decay, and one will repair, but the others will not repair the same, he shall have this Writ against them; and the Writ is such:

B RexVic.&c. Si A fecerit, &c. tunc sum. &c. B & C quod sint,&c. ostensur. quare cum iidem A, B & C quod dam molendinam in N pro indivist teneant, & ipst exitus inde provenientes pro equali portione inde percipiant, & ad reparationem & suffent. ejusem molendini teneant. ac iidem B & C licet portionem de exitibus illis ipsos contingent. percipiant, reparationi tamen & sustentationi predicti molendini contribuere contrad. in ipsus A dampn. non modicum & gravam. ut dicit,& babeas ibi sum. &c.

And so if a man have a house adjoying to my house, and he suffer his house to lie in decay to the annoyance of my house, I shall have a Writ against him to repair his

house in such form:

Præcipe A quod, & c. reparari fac. quandam domum suam in N, quæ minat. ruinam ad nocumentū liberi tenementi B in eadem villa, quæ reparari debet & solet, ut dicit. & c. ir nisi, & c.

And foif I have a passage over a Bridge, and another ought to repair the Bridge, and he suffer the same to fall to decay, I shall have a Writ against him in this form:

Rex, &c. Præcipe A quod, &c. reparari faciat una cum B & C participibus suis, pontem vel quod dam stagnum in N, quem vel quod cum eis reparation. debet ut dicit, & nisi, &c. vel sic, quendam pontem, vel quoddam stagnum, qui vel quod dirut, vel dirupt. est, ad nocument. libri tenement. B in eadem villa, quem vel quod facere debet & solet, &c. ut dicit, vel sic, reparari factum B & C participibus suis sossata & mallias in N, que diruta sunt ad nocumentum libri tenementi B & C, quas vel quæ cum eis reparare debet & solet ut dicit, &c.

And if any Bridge or Wall, or Sewer be broken unto the annoyance of the Country, upon a furmife made by any perfon thereof in the Chancery that certain perfons ought to repair the fame, he shall have a Writ unto the Sheriff to distrainsuch persons to repair the same. But it appeareth by the Register, That the King shall send his Commission to the Sheriff, to enquire who ought to make such Bridge,

and

and that he distrain them to make the same, and repair it. But by the Statute of 28 E. 3. cap.9. A Commission shall not be made unto the Sheriff to take an Indicament; and the King may fend unto the Sheriff to distrain those perfons who ought romake or repair fuch a way, or causey, or pavement, and upon it an Alias or Pluries, if it be not done. and an Attachment upon the same; And if the bridge or way be in the Confines of the County, he shall have several Writs unto every Sheriff to distrain them in their Bailiwicks, that they with the men in the other Counties shall make and repair the bridges and ways, &c.

And there is another Writ in the Register in the title of F

the Writ of Ex gravi querela, thus:

Rex Majori & Vic. de A salutem, Ex part. W nobis est oftensum quod cam ipse habeat quoddam selarium cum pertin. in præd' villa de A, ac I, habeat quoddam selarium cum pertin. in eadem villa dejuper felarium pradictum dirutum & confractum. ad nocumentum felarii ipfius W, & per præf. I fecundum consuetudinem villa prad. reparar. debeat, idem tamen I selarium illud reparari contradicit, prout dicit, ad grave damnum ipfius W, & contra consustudinem prædictam : Et quia nolumus, quodidem W injurietur in hac parte: Vobis præcipimus, quod vocatis coram vobis partibus prædict auditisque hinc inde eorum rationibus, eidem W in pramiff. fieri fac. debitum & festinum justitiæ complementum, prout de jur. & secundum consuet. &c.

And thereupon the Mayor and Sheriffs, or Bailiffs shall proceed, and award process against the parties; and if they will not do it, he may have an Alias and a Pluries, and At-

tachment against the Mayor and Bailiffs.

#### Writ de Curia claudenda, and for repairing of Hedges.

IIR.2. Curia Claudend. 5. L.5.E.3.100 it ought to be in the Debet and Solet, and the Tenant for life thall have the Writ.

He Writ of Curia claudenda may be fued before the She- G riff in the County, and then the Writ is such:

Rex Vic. &c. Justicies A quod juste, &c. claud. curiam suam in Noque aperta est ad nocumentum liberi tenementi B in eadem villa, vel in alia villa , quam claudere debet & folet ut dicit, ficut. rationabiliter monstrare poterit, quod eam claudere debeat, de amplius, &c.

And this Writ lieth where one ought for to enclose his H Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be fued in the Common Pleas,

and then the Writ is fuch :

It his sitor any default of Enclosur. Rex. quia timet ) Inst. 11 100: a. 2 H.4.II.

Rex, &c. Pracipe A quod juste, &c. claudat Curiam suam in I.5E.4.118, N qua aperta est, ad nocumentum liberi tenement. (usque ibi) 119.a man shall have this Writ

before he be damnified, Quia timet. 27 H. 6. Curia claud. a Nontenure is a good plea in this Writ.

And this Writ may be removed out of the County at the fuit of the Plaintiff without cause, and at the suit of the Defendant he ought to shew cause in the Writ, and in the end Per sineux of the Writ shall be this clause: Fiat executio brevis, &c. st the Judgcausa sit vera, aliter non.

And the Curia claudenda doth not lie but against him who recover the hath a Close adjoyning unto the Plaintiffs Land, and it doth not lie but for him who hath a Freehold in the Land, for and damater and for yeers shall not have this Writ, and the viewlieth 22 H.6.7,8.

in this Writ.

But it feemeth that if a man have Common in a great 'claud.' 36 H. waste to him and his heirs, or for life, and he who hath the '6.ib.ad.' 36 H. waste to him and his heirs, or for life, and who ought to '13 R.2. Cur. canclose, enter into the waste and will not make his enclose, enter into the waste, and will not make his enclosure, yet the Commoner shall not have this Action for 24 E.3.4. the damages which he sufficiently, &c. although the Com-15 H.7.13. moner may distrain the Cattel damage seasant in the Land, 5 H.7.2. which is his Common, for the Writ doth suppose Ad Nocu-22 H.6.9. mentum Liberi tent, of the Plaintiff, which proveth that the Plaintiff ought to have the soil adjoyning, if he have the

Action.

And the process in this Writ is Summons, Attachment and 22 E.4. Iffue
Distress, and if he do appear and afterwards make default 127.10 E.
he shall have a Distringas in the place of a Petit Cape, &c. 47.13 R. 2.
And if he make default at the day of the return of that
Writ, he shall have a Writ to enquire of Damages, and also
a Writ to distrain him to make the reparations, &c. And in

E this Writ in his Count he ought to flew the certainty of 29 H.6. the Land which the Plaintiff hath adjoyning unto the De 38 Dy. fendant, and the certainty of the Land which the Defendant hath thereadjoyning, which he ought to enclose. And to alledge a prescription of the Enclosure, &c. as appeareth in the Count in the Book of Entries, fol. 32. So it is holden 22 H.6.8. for if it be by Indenture or Composition, then he shall put to his Writ of Covenant.

# Writ of Quo Jure.

The Writ of Quo Jure lieth, where a man hath Lands in F Fee, and another claimeth Common in that Land, then he who oweth the Land shall have this Writ against that Commoner who claimeth the Common, and the form of the Writ is such.

7 H.4.12. it is a good Writ is fuch:

plea to fay that he hath nothing in the Lands in which he claimeth Common.

Rex Vic. &c. Si A fecerit, &c. tunc sum. &c. B quod sit, &c. G ostens. quo jure exigit, &c. communia pasturæ in terra ipsius A, sicut idem A null. habet communiam in terra ipsius B, nec idem B servitium & saciat, quare communiam in terra ipsius A habere debet, ut dicit, & habeas inde,&c.

And this Writ lieth for the Lord of a Town, or of a H waste, or for any other Tenant who claimeth Common in his Land, although he be not Lord of the Waste, nor the Town.

And this Writ is a Writ of Right in its nature, for when I the Plaintiff hath declared in this Writ, the Tenant shall make desence and set out his title to their Common, and alledge seisin thereof, and the Esplees, Et quod tale sit, jus sum offert, &c. as the Demandant shall do in a Writ of Right, and then the Plaintiff in the Quo jure shall make defence, and dony the seisin alledged by the Desendant, and joyn the Mise upon the meer Right, or by Battail, and see the Count and the form of pleading in a Quo jure, Lib. Dent. 96. and 80.

And in a Quojure brought by two, Summons and Seve-K rancelieth, and the Nonfuit of the one shall not be the Nonfuit of the other. And this Quo jure lieth against several Tenants, as it appeareth, H.24. b.3. But in that case they shall, it seemeth, make several Desences, and make several Titles, and joyn the Mise severally. And the view shall be granted in this Writ. And the process in this Writ is Summons, Attachment and Distress, and after appearance if the Desendant make default, a grand Distress shall issue out in the place of Petit Cape, &c.

# Writ de Rationabilibus Divisis.

M The Writ de Rationabilibus Divisis, is in its nature a Writ of Right. And lieth properly where two men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town and Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the land of one, and which is the Land of the other; Then to set the bounds in certain, this Writ lieth for the one against the other; and the form of the Writ is such:

N Rex Vic', &c. Præcip. tibi, quod justè & sine dilatione fac.

esse rationabiles divisas inter terram A de B in C, & terram

D de E in F sicut esse debent & solent, unde idem A querit.

quod præd. D plus inde trabit ad seodum suum, quam ad ipsum

pertinet habend. ne amplius, &c. Tefte, &c.

And this Writ lieth for Tenant in Fee-fimple, and against Tenant for life, and in this Writ the Tenant for life shall have aid of him in the Reversion, and they may joyn the Mise in this Writ, and it shall be tried by the grand Assize,

as other Writs of Right shall be.

And this Writ is *Vicontiel*, and may be determined by the Sheriff; For the Plaintiff in this Writ shall make his plaint before the Sheriff, in nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant, and when he cometh the Plaintiff shallcount, and the Defendant shall answer the same in the County, &c. and if he deny it, then the Sheriff shall make the division and partition of the Land between them by certain metes and bounds.

Q But if the Defendant will plead and joyn the Miseupon the meer Right, and put himself on the grand Assize, then the Plaintiff ought to remove the same by a Pone, without cause, and the Desendant may remove it with cause, as it is said in other Writs. And the Count in this Writ is in this

form:

Et idem A modo venit & dicit quod cum rationabili & reet. divis. esse debent, interterram prædistam N, &c. in S & terram ipsus A in B diviss prædist incipient. versus Borcam in quodam loco vocato K, & sic directe versus Austrum in longitudinem per L usque E ultra quas divisas prædistas N, &c. nibil babere debet versus Occidentem, idem N,&c. ultra divis. præd. traxerit ad seodum suum in S de terra ipsus A,

trecent

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trecent. acras mora & pastura, &c. unde idem A dicit quod quidam W, nuper pat. suis fuit seisitus in dominico suo ut de feodo per divisas metas & bondas tempor. pacistempore, &c. capiend. inde explet. &c. ad valenc. & quod tale fit, jus suum offert, &c. And the Tenant may joyn the Mise by battail or by grand Affife,&c.

And divers Tenants in common of a Town or Hamlet, A may have this action against him who is Tenant of another Town adjoyning, and they shall Count one Count, and shall make their feveral titles in that Count, and shall alledge the esplees severally in the same Count. Which see in the book

of Entries, fol. 167.

And the Defendant shall make his defence several against B every one of them, or may wage Battail or joyn the Mife at his pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Esplees, as before, and then to joyn the Mise with the Tenant upon the meer Right, or by Battail at the pleasure of the Tenant. And if they do joyn the Mife in the County before the Sheriff, by Battail, it shall be determined there, but not by the grand Affife, &c. And it feemeth, that Tenant in C tail, nor a Parson of a Church, nor Tenant for life shall not have this Writ, for he ought to have an Estate in fee who maintaineth this Writ, and fummons and feverance lieth in this Writ, and the view shall be granted in this Writ. And D Joyntenancy or Coparcenary is a good plea in this Writ, E and the Writ may be brought against several Tenants, who have Tenements in severalty or in common in the other Town,&c.

#### Writ Ex parte talis.

Note, 13 R 2. Fitz. Accompt st. upon this Writ of Ex parte talis. the Barons of the Exchequer use the Writ

"He Writ of Ex parte talis lieth where Auditors are af- F figned unto a Bailiff or Receiver to accompt, and the Auditors will not allow unto the Bailiff or Receiver his reafonable allowances, which they ought to do, but commit him to prison; he who is so imprisoned shall have this Writ Ex partetalis, &c. But if a man bring a Writ of accompt, and Auditors are affigned unto him who is Bailiff or Receiver, to take his accompt, and they will not allow him his allowances which they ought to do,&c. he shall not have this Writ Averm that of Ex parte talis nor any other remedy in that case, for he the Plaint in may fhew the fame to the justices, and they shall relieve

hath paid the mony by the commandment of the owner, or fuch special matter, without writing or Tally of the fame. And

G And if a plea of accompt be fued in London against a Receiver, &c. or in other Court of Record, and the party appear, and Auditors are affigued him by the Court, and they will not allow unto him such allowances which he thinketh they ought to do; he shall have a Writ of Exparte talis, and the Writ is such:

Rex, &c. Ex parte A capti & detenti in prisona noftra Linc. pro arreragiis compoti sui, in quibus B afferit ipsum sibi tene. de tempore quo fuit ballious suus in M, nobis est oftensum quod auditores compoti prædict. per ipsum B ad hoc deputat. ipsem A super eodem compoto in debit. gravaverunt, onerando ipsum de receptis, que non recepit, vel non allocandum ei expens. & liberationes rationabiles, in ipfius A damnum non modicum & gravamen. Et quia nolumus, quod eidem A injurietur in hac parte, Tibi præcipimus, quod si prædist. A per testimonium auditor. compoti liberat. fuerit, & invenerit tibi suffic.manucapt. qui eum manucapiant habere coramThesaurario & Baronibus noftris in Scaccario nostro, ad reddendum præfat. B compotum suum juxta formam statuti de communi consilio regni nostri inde provis. tunc ipsum A à prisona prædicta, si ea occasione & non alia detineat. in eadem, deliberari fac. per manucaption. Supradict. Et scire fac. prædict. B quod tunc sit ibi cum rotul. & talliis, per quos prædi&. A compotum suum prius reddidit, ad faciendum & recipiendum in pramiff. quod de jure & secundum formam statuti præd. inde fuerit faciendum, & habeas ibi nomina manucapt.illor. & hoc breve. Teste, &c. Vide Stat. inde Westm. 2.cap.II

H And this Writ shall be returnable before the Treasurer and Barons of the Exchequer at a certain day, as it appear-

eth by the Writ.

And if a man have Auditors affigned him in London by the party who taketh the accompt, and will not allow his tallies or other things to be allowed, but commit him to prifon, and because he is a stranger in the City he cannot find sureties to bail him to such his Writ of Expartetalio, &c. Then he may send unto the Chancellor, and surmise in the Chancery, and put in sureties before the King there, and thereupon he shall have a Writ unto the Sherist of London out of the Chancery, rehearsing the matter, and how that he hath found sureties there, according to the Statute, commanding the Sherist to deliner him out of prison, and the Writ shall be such:

Rex Vic<sup>2</sup> Lond. &c. Ex parte A, &c. (ut supra usque ibi) non modicum & gravamen. Et quia idem A forinsecus est in Civitate nostra Lond. & ignotus, per quod manucaptores de eadem

faurio & Baronibus nostris de Scaccario ad reddend. compotum Swim pradictum & ad faciendum ulterius, & recipiendum qued Curia nostra considerabit in præmiss. vosque alios manucaptores quam de Civitate ab eodem A admittere recufaftis, ac idem A Sufficient. manucaptor. coram nobis in Cancellar. noftr. invenit. viz. C.D dy E de com. Eborac. quam eum manuceperunt habere coram Thefaurio vel ejus locum-tenente, & Baronibus nostris de Scaccario in quind. Pascha, proxim. futur. ad recitandum ibidem compotum suum prædict. & ad stand. recto in præmiss. secundum formam statut. de commun. consilio regni nostri inde [130] provisi Vobis mandamus, quod ipsum A à prisona prædicta, fi ea occasione & non alia detineatur in eadem, interim deliberari fac. per manucapt. Supradict. Et scire fac. pradict. B quod tune fit, oc. per quos prædict. A compotum luum prius redditum supradielum & ad faciendum & recitiendum quod juftum fuerit, & consonum ration. Et habeas ibi hoc Breve,

> And if he do remain in prison, he may sue the Exparte A talis returnable before the Treasurer and Barons of the Exchequer, and thereupon he may have another Writ out of the Chancery directed unto the Treasurer and Barons of the Exchequer, that they take furcties of him who is in prifon according unto the form of the Statute; and that they deliver him out of prison, and shall have another Wrir unto the Gaoler, that he fend his body before the Treasurer and Barons of the Exchequer, and that he deliver the body when the Treasurer and Baron send hima Writ so to do. &c. which Writ appeareth in the Register

And if a man be committed to prison by Auditors for B arrearages of his accompt, and afterwards escape out of prison, the Gaoler shall satisfie the party at whose suit he was committed, and the Gaoler shall have a special action upon the Case upon the prisoner to answer the escape and the damages which the Gaoler hath sustained, which Writ is among the Writs of Ex parte talis in the Register; But it feems reasonable that the Gaoler may take the party again,

and fo is the opinion of some Books.

13 E.4.9. 14. H. 7.

Ve. 6 H.7.

11: & 12.

10 H.7 25.

na

#### Writ of Execution upon a Statute Merchant.

A Writ of Execution upon a Statute Merchant lieth in case, But if a Sta-where a man is bounden in a Statute Merchant before than the acany Mayor or Bailiff of a Corporate Town, who have power knowledge to take fuch Bonds or Recognizances, to pay a certain fum of ed to one money at a day, at which day he doth not pay the same, then who is abhe to whom the Obligation or Recognifance is made, may come fent it shall before the Mayor, or him before whom the Bond or Recog-not bind, nisance was taken, and pray him to certifie the same into the mission if it Chancery under his feal according unto the Statute of Acton be not deli-Burnel, & if he will not certifie the same as he ought to do, then vered to he Recognifee may have fuch Writ directed unto the Mayor: the Commi-

Rex dilectis sibi Majori Linc. et T. Clerico ad recognitionem see, as it debitorum apud L. accipiendum deputatis salut. Ex parte I.no- feemeth by bis est ostensum, quod cum R. ann. regni nostri decimo, co- Fitz. acram W. nuper Majore villa Linc. & H. nunc Clerico ad compe 79. bujusmodi recognitiones in eadem villa accipiendas depatato, recognovisset se debere præfat. 24.1. juxta formam statuti dudum apud Acton Burnel pro mercator editi, certis terminis folvend. et licet termini sclutionis prædict. jam din sunt elapse, idemque I. vos sapius requisierit, ut nos in Cancellar. nostra de recogn prædict juxta formam statut. præd.certificaretis,et vostamen nos in Cancellar.nostra præd. superrecognitione præd.bucusque-certificar.diftuliftis, et adbuc differtis, unde quam plurimum admiramur. Vobis mandamus quod scrutatis rotulis de bujusmodi recognit.cor. pref.W.& H. anno pred. factis in custodia vestra, ut dicitur, existentibus, si inveneritis recogn.præd.in forma præd. fatt.fuisse & terminos solutionis præd. elapsos suisse, et nos in Cancellar. nostra alias inde certificat. non fuisse, tune nos in eadem Cancellar. Super recognitione prad. distincte & aperte, juxta formam statuti præd. sub sigillo pro recognitione mercatorum ibidem deputatis certificetis ut ulterius super hoc fieri faciamus, quod fecundum formam prædicti ftatut. fuer. facien-

And if he will not certifie by this Writ, he may fue an Alias and a Plaries and Attachment against the Mayor and Clerk, and it appeareth by this Writ, that if an Obligation be once certified in the Chancery it ought not to be certified again without Affidavit made, that execution was not fued uponit, and then he shall have a special Writ unto the Mayor for it, for then it shall be taken a several Obligation upon every Certificate,

# Writ of Execution upon a Statute Merchant.

And also it ought to be certified under the Seal of him E who is deputed to feal the Obligation. And if the Mayor do F make his Certificate unto the Chancery, then the party shall

have a Writ to execute the Statute, thus:

Rex Vic. Linc. falut. Quia A. de B. coram C. & C.clericis ad recognit. debitorum apud L.accipiend. deputat. vel fic, coram D. Majore : vel f.c. coram L. nuper Majore Civitatis nostra Linc. & F.Cle ico, vel, tunc Cleri o ad recognitionem debitorum apud L. accipiend.deput.recognovit fe debere E.10. libras quas ei folvisse debuiffet ad festum, &c.ann. &c. & eas ei nondum folvit,ut dicitur, Tibi præcipimus, quod corpus prædict. A.fi laicus fit, capias, & in prisonanostra salvo custodir facias, donec eidem E.de prædicto debito vel execution.testamenti prædict. E. de prædict. 10 l. plene Satisfecerit. Et qualiter hoc præceptum noftrum fuerit execut. nobis scire facias in Octabis S. Hill. ubicunque, &c. per literas tuas figillat. & habeas &c.

And this Writ may be returned as well into the Common H Pleas as Kings Bench. And if a man make a Statute Mer- I chant of 100 l. payable at divers days, if he fail of payment at any of the faid days, the Recognifee shall sue execution at that day, and shall not stay his execution until all the days are

past, as he shall do of an Obligation.

If a man be bounden to pay 20 1. at divers days, he shall Contrary in Covenant or not have an Action of Debt upon the bond, until all the days if heaffent are past. But if he who is bounden in a Statute Merchant be to pay, by a Clark or Abbot,&c.then the Writ of Execution is of ano-5 M1. 107. ther form, viz.

14 H.8.14.

Brusenell.!

Rex, &c. qui: A. parsona Ecclesia de B. coram, &c. pracipimus tibi quod prædict. 10 l. debonis & catallis ipfius A. in ba'liva tua mobilibus fine dilatione levari, o eund. E. habere fac. Et qua-

liter hoc præceptum,&c.

For a Clark shall not be arrested by his body upon that Statute, and if process be awarded to arrest him, by that Statute he shall have a Writ unto the Sheriff, that he do not trouble or molest him, and if he have arrested him for the fame, that he deliver him, if he know no cause why he should not enjoy the priviledge of a Clerk: And in some such Writ there is a proviso put in the end of the Writ, thus:

Provilo quod prædict.decemlibr.deterr.bonis & catallis ipfius A. fi non levate fuer, justi formam statuti prædict. leventur, ut

eft iuftum, &c. Teft:, &c.

If a man be bounden in a Statute Merchant in 20 l. and B the Statute at the fuit of the Recognisee is certified in the Chancery, and afterwards he dieth, his Executors may have a special Writ unto the Mayor, reciting the Certificate

ficate before them, commanding them to certifie the fame

again into the Chancery, and the Writ is fuch:

Monftraver. nobis L. & W. execut. teftamen. L. de B. quod cum R, &c. (ut supra usque ibi) juxta formam statuti pr.ed. certificaretis: vos tamen pro to quod per rotulos vestros invenistis quod Cancellar. nostra Super eadem recognition. alias effet certific. quicquid inde facer. non curastis, ac præf. execut. coram nobis in Cancellar. noftra personaliter constituti afferuerunt, aliquam execut. recognit. prædict. in vita ipsius L. seu post mortem fuam virtute certificat. inde in Cancell. prius fact.nullatenus fact. fuisse, & nobis supplicaver. ut fibi in hac parte velimus de remedio providere. Et qui eisdem execut. quatenus juste poterimus in hac parte velimus subvenire, vobis mandamus, quod scrutat. rotul. vestr. hujusmodi recognit. contingent. si invenerit. recognit. illam in forma prædicta factam fuisse, & terminos solution. transactos effe, ut est dictum, tunc nos in Cancellaria noftra super recognit. prad. diftincte & aperte sub figillis vestris pro recogn. debitorum ibidem deputat. prout moris eft, certificetis, non obstante Cancellar. nostra prins inde extitit. certificata. Tefte, &c.

But this Writ is not granted but upon Affidavit and oath made by the Executors in Chancery, or by him who would

have that Execution.

B

### Writ of Execution upon a Statute Staple.

A ND if a man be bounden before the Mayor of the Staple A in a certain sum, to pay at a certain day, &c. and he do ve. 45 E 3. not pay it according to the Statute; then he to whom the Ob- 22. Finch ligation is made, shall come before the Mayor and shew him den. Executhe Statute, and pray him to certifie it under the feal into tion shall be the Chancery, as he shall do upon a Statute Merchant. Or the fued first of the Chancery, as he in all do upon a Statute Meteriality in the goods, Mayor may award Execution if the party be dwelling within the goods, his jurifdiction, or have Lands or goods there, &c. And if the the lands. Mayor will not certifie at the request of the party, then he But 7 R.2. shall have a Writ out of the Chancery unto the Mayor to cer- Execution. tifie the same, as he shall have upon a Statute-Merchant shewed 46. the party in Chancery; and upon the same an Alias, and a Pluries, and At-hath his Ein Chancery; and upon the lame an Alfas, all a Fluris, and Africa lection to tachment against the Mayor if need be; and when the Mayor take one of hath certified the Statute under the Seal, then the Writ of Ex-the other ecution shall iffue forth against the party, to arrest him, and and so is the to extend his Lands, &c. and this Writ shall be always returna- use at this ble in the Chancery, and not in the Kings Bench nor Common day. Pleas, as the Writ which issueth forth to do execution upon a Statute-Merchant, and the form of the Writ is fuch:

AR 2

Rex Vic. Linc. salut. Quia R. de W. xx. de Septembr. et ann. &c. coram E. de B. Majore stapul. nostre de B. ad recogn. debitor in eadem Stapula accipiend deputat recognovit se debere W. de F. osto libr. &c. quas ei solvisse debutt in Festo &c. tunc &c. Et quas ei nondum solvit, ut dic. Tibi pracipimus, quod corpus pred. R. si laicus sit cap. et in prisona nostra donec eidem W. de prad. debito plene satisfecerit, salvo custo det omnia terras et catallipsus R. in balliva tua per sacrament proborum et legalium hominum de balliva prad. quo rei veritas melius sciri poterit sux arerum valorem eorund deiigent extendi et appreciar et in manum nostram seisiri fac. et ea pras. Quousque sibi de debit prad. satisfast suer. libert ac juxt. sorm. ordination. inde sast Et qualit. hoc precept. nostrum juerit execut. scire sac. nobis in Cancell. nostr. in Crastin. animarum proxim. suturo ubicunque tunc suerit per literas tuas sigillatas, et habeas ibi hoc breve, &c.

And by this Writ it appeareth that the Sheriff may arrest the Conusor, and extend and take his Lands, Goods and Chartels, and return the same extent in Chancery, &c. And thereupon the Conusee may sue a Writ unto the Sheriff out of the Chancery to deliver him the lands and goods to the value of the Debt, which Writ is called Liberate, and is such:

[132] RexVic. &c. Cum R, de W.xx, die (usque ibi) per literas tuas figillatas, &c tunc sic: Ac tu nobis returnasti, quod prædict. R. non suit, sed quod cepisti in manus nostromnia terras & tenementa &c talla ipsius R. in dicta ball. tua, &c eaextendi &appreciari secisti juxta tenorem brevis nostromera. Viz. duas partes unius messuagii, que appreciant. ad quinquisioras, Tibi præcipimus, quod eidem A. omnia terras & tenementa, &c catall. præd. per te in manus nostras sic capta, se eapre extent. &apprec. præd. beber voluerit, liberes, habend. juxta form. ordinationis præd. quousquissibi de debito præd. suer satisfact. Et qualiter hoc præceptum nostrum sueris execut. sire sac in Cancell. nostra in quinden. Pasche prox. sutur. ubicunquinc suerit per literas, &c. Et habeas, &c.

And if a man be bounden before the Mayor of the Staple, A or in a Statute Merchant before another Mayor, &c. and have no Lands but in Durbam, or other County Palatine, Then upon the Certificate of the Statute made by the Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor tenements within his Bailywick, the party may furmife that he hath not any thing but in the County Palatine, &c. and pray that the Tenor of the Record may be fent thither, to have execution done, and upon that furmife he shall have such Writ:

₽ E.4.10:

## Writ to do Execution in a County Palatine.

R Ex venerabili in Chrifto patri I. eadem grat. Dunelm. Epifc. vel ejus Canc.in Epifcopatu præd.falut.&c. Tenore cujufdam statuti de stapula facti coram W. de W. nuper Majore stapul. Westm. ad recognitiones debitorum in eadem stapula accipiend. deputat.de xl: li. T. de W. jam defunct.ut dicit, & E.de R.civ. Lond. per Agnetem que fuit uxor. H. de R. Episcopat. Dunelm.nuper recognitis, or per N. B. nunc Major.dict. stapulæ in Canc.nostram missi: vobis mittimus præsentibus interclusum, ut inspecto tenore præd. ulterius ad prosecutionem Katharinæ que fuit uxor præfat. T.I.F. & R. de L.executor. testamenti prad. T. executionem recognitionis præd. fieri fic' prout de jure & secund.legem & con-Suetud.regni Angl. fuerit faciend. Teft. &c.

And if the Statute be not sufficiently certified in the Chan- Note, 2 R. 3. cery by the Mayor, dgc. because he hath omitted any part of 7.3. several the Bond, as the Name, or fur-Name, or other matter material, Certificates then upon Affidavit made, that he hath not had execution by upon one reason of that Certificate, he shall have a new Writ unto the Statute. But Mayor and Clark, &c. to certifie the Statute fully again into it cannot be the Chancery, notwithstanding his Certificate made before, intended

and that Writ doth appear in the Register.

If the Mayor doth make a Certificate of the Statute into they were the Chancery, and delivereth the same unto the Recognisee, three several Statutes, and the party keepeth the Certificate, and will not put it into And note, the Chancery; and afterwards another is made Chancellor, That fevethe party ought to have a new Certificate to that Chancellor, ral writs otherwise he shall not have execution of the Statute upon were awarthat Certificate made to the old Chancellor which was not ded upon delivered in time into the Chancery: and then he ought to them to fefue a Writ in Chancery directed unto the Mayor, to make a riffs. new Certificate, and the Writ shall be such;

Rex &c. Majori Stapulæ Westmon. ad recognitiones debitorum in eadem stapula accipiend. deput. falut. Ex parte D. &c. nobis est oftens. quod cum W. de E. &c. ann. regni nostri tertio coram vobis in stapula præd. recogn. se debere præf. A. xl. li. juxta formam statuti stapulæpræd. cert. termin. solvend. & licet vos termino solution. præd. elapso R. Episc. London. nuper Cancellar. noftro dum in officio Canc. stetit, sub sigillo officii vestri, prout moris est, certificaveritis, quia tamen prad. D. dictam certificat. penes fe bucufque retinuit, & praf. R. nuper Canc. cui prius nominatim inde certificastis, ab officio suo Canc. à diu est & extitit. onerat. Volumus, & vobis mandamus, quod dicta certific. præf. nuper Canc. per vos fic fac. sané &

integr. vobis restit. & scrutatis rotulis de hujusmodi recognitione coram vobis ann. præd. factis, si inveneritis recognition. præd. factam suisse, tunc. Canc. nostro moderno in eadem Canc. super recogn. præd. distinct. & apert. juxta form. stat. præd. sub sigillo pro recognitionibus stapulæ præd. deputat. certissect. indilate, utterius super hoc sierifaciamus, quod secundum formam statuti præd. suer. faciend. dicta certisse. prius sic sacta non obstante. Teste, &c.

But note, That if in the first Certificate he hath not expressed the name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue execution upon it, and therefore it is good to make the Certificate general to

the Chancellor without naming his name.

## Recognisance in the County before the Sheriff.

IF a man doacknowledge in the County before the Sheriff, to pay to another a certain fum of money at a day certain, and do not pay it at the day, then the Recognifee shall have a Writout of the Chancery unto the Sheriff, commanding him to do execution upon that Recognifance, and the Writ shall be such:

Rex Vic. &c. Monstravit nobis A. quod cum ipse implacitasset in Com.tuo per brev.nostrum B. & idem B. in pleno Com.illo recognovit se debere praf. A. certam pecuniam ad sertum terminum reddend tu tamen termino illo elapso, eandem pecuniam eidem A. nondum solutam ad querimoniam secundum recognitionem sum habere non secisti, in ipsius A. damnum non modicum & gravamen. Et quia eid A. prout justum suerit subvenire volent inhac parte. Tibi precipimus, quod si ita est stunc pecuniam illam de bonis & catallis ipsius B. in ballivatua sevari, & illa praf. A. sine dilatione habere fac. ne clamor ad nos inde perveniat iteratus. Tesse, &c.

But it feemeth Recognifance shall be made when a plea is A depending in the County before the Sheriff by Writ between the parties in debt, &c. but if there be not any plea depending in the County by Writ, but by plaint. Quere, if that Recognisance shall be made; and it seemeth reasonable that it may be taken, as well when the plea of debt is depending in the County before the Sheriff by plaint, as if it were by the Kings Writ.

But if a man will come into the County before the Sheriff, and there in Court acknowledge to pay a certain fum of money, unto another at a certain day, %c. where there is not any plaint or action depending, betwirk the parties, whether this acknowledgment shall be good or not, Quare. And it

feems

[133]

feems reasonable, That if it be under the sum of 40 shillings, that fuch acknowledgment shall be good, and bind the party:

And if the party have a Writ to the Sheriff to do execution of fuch Recognifance (as before is faid) and the Sheriff will not do the same, then the Recognisee may sue an Alias and a Pluries, and attachment against the Sheriff, and the form of the Writ is fuch:

Rex &c. Ex parte A. accepimus, quod cum nupertibi praceperimus, quod fi B. recognosceret se debere A. tantum, tunc 3) um B.diftringeres ad præd. debit. eidem A.fine dilatione reddend.ac licet idem B.coram te recognoverit se debere præf. B.præd. debit.tamen ipsum B.ad debitum illud reddend.distringer.hactenus distulisti, & adhuc differs, in ipsius A. damnum non modicum & gravamen: Et ideo tibi præcifi nus, quod si ita est, tunc execution. recognitionis sine dilatione fieri facijuxta tenorem mandati nostri præd. & hoc nullo mode omittas, Teste &c.

But it seemeth by this Writ, that if the Recognisor will not again acknowledge the debt before the Sheriff when he cometh to him to do execution; &c. but fay that he hath paid the fame, That then the Sheriff ought not to do execu-

Rex Vic. &c. Pracipitibi, quod fi A. recognovit fe debere B. 3 Jup 19182: cen'um solid.tunc ipsum A.distr.ad præd. debitum eidem B. redd.

And he may have an Alias and a Pluries and Attachment upon the same, &c. And if the Sheriff return upon the Alias; quod distrinxit partem per frument.vel per alia catall.ad quod non invenit improves. Then by the rule of the Register shall be awardeda Writ of Pluries reiterando returnable, & illud insuffic.reputand. &c. But Quere tamen of that; for it seemeth to be a good return: and Quære if the Sheriff may fell the goods to pay the Recognisance, for it seemeth by the Register he may fell the parties goods.

And if a man be in Execution upon a Statute Merchant, he ought to be found in Prison for the rents and revenues of his Lands which are in Execution, &c. that is to fay, with bread and water, as appeareth by the Statute; and it he have not the same, he may sue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the livelyhood which the Statute giveth him, and the Writ is fuch:

Rex Majori & Vic. Lon. salut. Cum in statuto de Mercator. edito contineat. quod mercatores pro quorum debitis contigerit debitores suos per formam statut. prædict. arrestari & impriforari, invenire teneantur debitoribus illis in prisona commo anta panem & aquam ad sustentationem suam. Vobis pracipimus, qd.

W. de S. pro debit. E. de K. per formam statut. nostri præd. ut dicitur arrestat. S in prisona nostra detent. se ea occasione & non alia detineatur in eadem, sieri sac. in hoc casu, quod suerit saciend. & in casu consimili sieri consuet. juxta sorm. Statuti præd. T. Sc. And upon that he may have an Alias, Pluries, & Attachment.

### Writ de Perambulatione facienda.

A Writ de Perambulatione facienda, ought to be sued with D the assent of both Parties, where they are in doubt of the bounds of their Lordships, or of their Towns. Then they by assent may sue this Writ, directed unto the Sheriff to make the Perambulation, and to set the Bounds and Limits between

them in certainty: and the Writ is fuch;

Rex Vic. &c, Precipimus tibi, quod assumpt. tecum 12. E discretis & legal. Milit. in com. tuo, in propria persona tua accedas ad terram A. de B. in N. & terram C. de D. in E. & per corum facramentum sieri sac. perambulac. inter terram ipsius A. in N. & terram ipsius C. de D. in E. ita gal. per ambulac. illa stat per certas metas & devisas: quia predist. A. & C. posuerunt se coram nobis in perambulationem illam; & scire sac. susticuostris apud W. &c. tali diezvel sustice ad priman assisse. sub segillo suo & sigilis quatuor legal. Milit. ex illis que perambulat. illi intersuer. per quas metas & divisas perambulatio illa sastas querit, & babeas ibi nomina Militum, & hoc breve.

And the King may make his Commission to other persons A to make that Perambulation, as well as to the Sheriff, and to certifie the same into the Common Pleas, or in the Chancery, or elsewhere, &c. And such Commission is oftentimes granted to make perambulation of three or sour Counties where they are in doubt of the Bounds and Limits thereof; and this perambulation made by assent, shall bind all the par-

ties and their heirs.

Eut if Tenant for life be of a Seigniory, and another who B is Tenant in Fee-simple of another Seigniory adjoyning sue forth such a Writ or Commission, by reason whereof a Perambulation is made, it seemeth the same shall not bind him in Reversion; neither shall the Perambulation made with the attent of Tenant in tail bind his Heir.

And the Perambulation may be made for divers Towns, C and in divers Counties, and the parties ought to come in person into the Chancery, and there acknowledge and grant that a Perambulation be made betwist them, and the acknowledgment shall be enrolled in the Chancery, and thereupon a Commission or Writ shall issue forth. And if the

Parties

29E.3.58.

Parties cannot come in Chancery, then they ought to fue forth a Writ of Dedimus potestatem directed to certain persons, to take their acknowledgment, and to certifie the same into the Chancery under his seal, &c. and then upon that Certificate retorned into the Chancery, That Commission or Writ may be granted, although the parties do not appear in person in Chancery to pray the same.

### Writ de Warrantia Charte.

D THE Writ of Warrantia Charta lieth properly where a Charta, the man dothenfeoffee another by deed, and bindeth him Defendant and his heirs to warranty, &c. Now if the Defendant be imfaid that he pleaded in an Affize, or in a Writ of Entry in the nature of had a Foran Affize, in which actions he cannot vouch, then he shall medon penhave that Writ against the Feoffer or his heir, who made such warranty: and the Writ is,

was against theissue in tail. Itin. North. 2. E. 3. Garr. de charters 13. 2 E. 2.

E Rex, &c. Prac. A. qd. juste, &c. warrant. B. unum mesuag. 2Tenants in cum pertin. in D. qd.tenet, & de eo tenere clam. & unde chartam Common suam habet, ut dicit. &c. Velsic: Manerium de N. cum pertin. shall joyn & advocat. Ecclesia ejusdem villa quam tenet, &c. (usque ibi) this Writ. unde chartam suam habet, wel chartam D. patrus vel matris vel al. 28 E. 3.90. fo where 3 are joyne tenants, and a Release to the other 2,40 E. 3.41,42.16 H 7.6,7. If the Desendant tender a Plea to the Plaintiss, and the Plaintiss will not enter it; he shall not have advantage in this Writ.

And although the Writ doth suppose that he holdeth of the Desendant, yet that is not material whether he holdeth of him or not.

And also that the Plaintiff holdeth any Land of the Desendant by Homage Auncestrel, and hath not a Charter thereof: yet he shall have this Writ of Warrantia Chartæ against the 5 Eliz. Dy. Desendant, and the Writ shall say unde Chartambabet, &c. and 2211. If the yet he hath no deed to shew, but only shall hold by Homage warranty be only against the Grantee case, those words, unde chartam habet, &c. are not material. & his heirs, and there be

not Dedi & Concessi in the Charter per Curiam, the Writ lyeth not.

12 H.3.Gart.de Charters. 27. One brought this Writ. 1. U. de Chartam suam habet; the Desendant said, Non habet Chartam suam, and the Plaintist confessed the same, and said it was Charta antecessives sai adjudged for the Desendant.

Services. Upon a Feoffment in Fee with warranty, he

If a man have a Lease of Lands for life rendring Rent, or G upon owel- maketh a gift in tail rendring Rent without deed, and afterty of Servi- wards the Lessee or Donee is impleaded in such action where ces, this Writ he cannot vouch, then he shall have this Writ of warrantia that is after Charta against the Lessor or Donor, or his Heir who hath the feifin of the Reversion: for that Reversion and Ren: reserved, maketh 2 warranty in it self by the Statute of Biganis, cap-ult. although 21 H.6.8. he hath not any deed thereof.

And if a man give Lands to one in Fee by deed by these H words, Dedi, concessi, &c. now he is bound to warrant the Lands unto the Feoffee by those words, and if the Feoffee be ought in his impleaded, he shall have a Writ of Warrantia Charta against County to the Feoffor, by these words, Dedi, Concessi, &c. but not against fer forth the his heir, for the heir shall not be bounden unto a warranty deed, 24 E. made by his Father, unless he bind him and his heirs to warranty by express words in the deed: as to say, Ego & hared.

mei omnia præd. terras, &c. warrantizabimus, &c. But note, That he shall not have the Writ of Warrantia I

In a Pracipe quod reddat. Chartæ against the Feoffor, or against him against whom he where the hath the warranty, if he be impleaded in any action in which Tenant hath he may vouch him, for then he ought to vouch him to wara Release or ranty; and if he will not youch him to action, he shall not Confirmation afterwards have a writ of warrantia Charta. on with

3. 35. acc.

for doubt the possession shall be counterpleaded, he shall have this Writ Wood and Brian. 12 H. 7.2.

And a man may fue forth this writ of Warrantia Charte before he be impleaded in any action, but yet the writ doth 21 H. 6.41. Suppose that he is impleaded; and if the Defendant appear 22 H. 6.22. and fay that he is not impleaded. By that Plea he confes-30 H.7.7. feth the warranty, and the Plaintiff shall have Judgment to

recover his warranty, so as if the Defendant be after impleaded, and vouch him to warranty, and he entreth into the warranty, and pleadeth and loofeth, and that the Defendant recover in value. The Defendant shall have in value of the 2 H. 4.14. & Landsagainst the Vouchee, which he had at the time of the

12 H.4.12. purchase of his warrantia Charte, and therefore it is good he hall have policy to bring his warrantia charte against him before he in value thebe fued, to bind the Lands of the Vouchee which he had at Lands which that time. For if a man be vouched, he shall not render in the time of Judgment: for the Judgment makes them fubje 2 to the Execution, I E' 3 11 Fitz. Garr.de charter 2.ac. 8 E.2. Voucher, 237. A man cannot vouch a Clark attaint, or a man outlawed; but shall rather have Warrant. Chart. contr. of an Idiot qued readat : Quere if it be Law at this day, Br. Warr. Chart. 29. 8 E.4. 10, Markham acc.

24 E.3. B . Warrant. Chart. 13.acc 19 E.3. Garr. Chart. 9.ac.

value,

value, but of the Lands which he had at the time of the Vouchee, and if he have aliened the Lands before the Voucher, he shall render nothing in value; and therefore it is policy to bring his warrantia Chartæ against him when he hath the Land to render in value. And upon this Writ and Judgment, the Land shall be bound. But if a man do recover his warranty by writ of Warrantia Charta, and hath bounden the Land which the Vouchee had at that time: yet if he be afterwards impleaded for that Land, for which he recovered his warran. ty, he ought to vouch him against whom he recovered his warranty, to defend the Land, if he be fued in any action wherein he may vouch otherwise he shall not have advantage by recovery of his warranty in the Warrantia Charta.

And if a man recover his warranty in a Warrantia Charte, and afterwards is impleaded in an action in which he cannot vouch, as by Affize, or by Scire facias fued forth upon a fine, &c. It seemeth he ought to give notice to him against whom he hath recovered his warranty of the action, and to pray him to shew him what he shall plead for to defend the

Land, &c. Quare tamen thereof.

If a man exchange Lands with another by deed, if he be impleaded, he may vouch him with whom the Exchange was ters 26. made, by reason of that exchange; and also he shall have a writ of Warrantia Charte by that deed of exchange, although there are not words of warranty in the deed; and the Vouchee shall have a writ of warrantia Charte, tamen Quare of that.

And if a man be impleaded who is not Tenant of the Br. War.ch. Land, but pernor of the profits, he shall not have a Writ of 30. None D Warrantia Chartæ. because he can lose nothing. And a man shall have shall have a Writ of warrantia Charta although he may vouch the writ but in the action brought against him, and if he do recover in the the Terre-Warrantia Charte, and afterwards lose in the action brought a-Tenant. gainst him, in which he hath vouched him against whom he wvillbe 7 E. recovered his warranty, Then he shall have a writ which is 4.12. called Habere facias ad valentiam, &c. presently within the 3 E.4.7. year after the recovery, and shall not sue forth Scire facias. A good plea And an affignee shall have a Writ of warrantia Chart.e. And a man shall have a writ of Warrantia Charte of Land nothing in the Land

or Rent which he demanded against him out of Land, &c. jour de briefe but there he ought to vouch of Land discharged of the Rent, purchase.

&c. if he may vouch in the action.

And a man may bring his writ of Warrantia Charte in Gar.ch.10. what County he pleaseth, if the deed bear not date in a 4 E.3. Gar. certain place, or County for then he ought to bring the writ for Rent for where the deed beareth date. But if a man bring a writ of vice. Warrantia.

that he had

Warrantia Charta, by reason of Homage Auncestrel, &c. then it ought to be brought in the County where the Land lieth.

E.I. Voucher, 266. 21 H.6.40. Newton. SeeLutleton. reason of this cafe.

And if a man dothenfeoffee another of Lands by deed with G warranty, if the Feoffee maketh a Feofment over, and taketh back an Estate in Fee, the warranty is determined, and he shall not have a writ of warrantia charta, because he is in of ano-111. for the ther Estate. And so if A. diffeise B. and enfeoff c. with warranty, who enfeoffeth D. with warranty, upon whom a ftranger entreth, in whose possession B. the Disseise releaseth his Right, all the warranties are extinct, and if D. re-enter, and be impleaded, he shall not have a writ of warrantia Charte, bevo Ing: 1.1. 1384: a: -cause he is in of another Estate by wrong. But if a man be impleaded for which he purchaseth a writ of warrantia Charte against whom he hath a warranty, and vouch him also in the action; and afterwards depending the action, a stranger who hathancienter title entreth upon him, yet that shall not abate his warrantia charte fued out before, quod ve. 21 H. 6.

4 E.2.Gar. If a man be impleaded in Affize, &c. and he bring a writ of H Charters 29. Warrantia Charte, and County, that he is impleaded by Assize, &c.and that he hath loft, &c. If the Plaintiff recover his warpersonal action in the ranty, he shall recover his damages, and also to have the value

Nature of a of the Land loft.

Covenant, therefore he shall recover damages. 9 H.6.21. It is holden, that in this case he shall recover damages only. But it feemeth by Br. Warr. chart. 31: that if he hath no Land to be recovered in value, that he shall not recover damages tantum, nor more than in voucher. It Inst + 285 20:

> And a man may fue forth divers Writs of warranty of I Charters against divers men: and if he have divers warranties against them, he shall recover severally against them.

> And a man may fue a Writ of warrantia Charte at the Com- R mon Law for a warranty made of Lands in ancient 'demesne.

> And if a man have a writ of Warrantia Charte depending, L although that the Plaintiff who brought the action against him, who wrought the warrantia Charte be Nonsuit in his action, the same shall not abate the writ of warrantia Charte, although he hath not an action fued against him for the Land, &c.

### Writ de Mesne.

18 H.3. HE Writ of Mesne lieth, where there is Lord, Mesne, M Mefne, 78. and Tenant, and each hold by Owelty of Services, as adjudged by Homage, Fealty, and 201. Rent yearly. Now if the Me fre ought Tenant be distrained by the Lord Paramount for the Rent to acquit the Tenant against all Lords Paramount, 29 E.3.34. acc.

Or

or Service of the Mesne behind, he shall have a writ of Mesne against the Lord who is mesne, and by the writhe shall recover his damages if he be distrained, otherwise not : and by N that writ he shall be compelled to do the Service, and to pay the Rents: and the writ may be fued in the County before the Sheriff, and the Writ is such:

Rex Vic, &c. Pracipimus tibi, quod Justic. A. qd.juste &c. Note, that acquietet. B.de servic.qua C. ab eo exigit de libero tenemento suo the Plaintiff qd. de præf. A. tenet in I.& unde querit. qd. pro defectu ejus di- in a Writ of ftrin-ficut rationabil monftrare poterit, quod eum acquietar debeat, medeth not ne amplius, &c.

in his Court to shew the

certainty of the Tenure between the Mefne and the Lord Paramount, but generally to fay, that he holderh over, per 38 H. 6. 12. and 39 H. 6. 29. 13 E. 4. 6. If there be Lord, Mesne, and Tenant, and the Tenant is distrained by the Lord for which he bringeth a Replevin, the Lord avoweth upon a stranger; The Tenant may have a Writ of Mefne; yet the Mefne cannot joyn because the Avowrie is made upon a stranger.

And if it be fued in the Common Pleas, the Writ is: Rex Vic. &c. Prec. A. qd. juste &c. acquietet B. de servic. qd. nos ab eo exigimus de libero tenemento &c. unde idem A. qui medius est inter nos & præf. B. eum acquiet are debet, & unde queritur, quod pro defectu ejus distringit. & nisi, &c.

And this writ is where the King distraineth for services, &c. And if another person be Lord Paramount, then the writ is; Quod acquietet B. &c. que C. de eo exigit de liberotenemento, &c. unde idem A. qui medius est inter C. & præf. B. eum

acquiet are debet, &c.

And the Writ of Mesne may be sued and removed out of the County, at the fuit of the Plaintiff by a Pone without [136] cause, and at the suit of the Defendant with cause shewed,

as in a Replevin.

And a man may have an acquital, and sue forth a writ of Mesne upon it divers ways. One if the Mesne grant unto his Tenant by his deed, upon his Tenure made of him to acquit him against his Lord Paramount, he shall have a writ of Mesne upon that Grant. Another cause of acquital is, where he Biholdeth in Frankalmoigne. Another cause is, where he holdeth

in Frankmarriage; or where he holdeth by the like Service Mefine 7. 38 H.6.12. as the Me (ne holdeth over, which is called Owelty. And also a man may have an acquital by prescription, as if 39. H.6.29.

C he hold by Homage Auncestrel.

And also by Conusance in a Court of Record for to ac-D quit him, &c. And the men of Cornwall claim to plead a Plea in a Writ of Mesne in the County without writ, and that they have had allowance thereof in Eyre. And although the writ of Mesne be depending betwixt the Mesne and the Tenant paravail, yet the Lord shall distrain the Tenant paravail for the Rents and Services, and he shall not tarry until the writ of Mesne be ended betwixt them, whether he ought for to acquit the Tenant or no.

da ist grist

And if a man bring a writ of Messe where he is not distrained, yet the writ is maintainable, but then he shall not recover damages: for the writ is brought only for to recover the acquittal, &c. As if he bring a writ of warranty of Charters where he is not impleaded, &c. he is to recover the warranty pro loco & tempore.

4 H.6.25. 4 E.4.35. 11 H.4.55.

And if the Tenant holdeth by the Services which the **F** Messile holdeth over, and also by other Services, it is a good owelty to have acquittal, because it is such, and more. And although that the Lord dieth depending the writ of Messile, yet the writ shall not abate.

15 H.6. Mefne 12. And Tenant for term of life where the remainder is over G in Fee, shall have a Writ of Mesne against the Mesne: but Tenant for life shall not have a writ of Mesne against him in the Reversion. But Tenant in Dower shall have a writ of Mesne against him in the Reversion, because she hath her Estate by the Law.

38 H.6.12. Frifot. 50 E-3.23.

And if the Mifre have paid the Services unto the Lord H Paramount, yet if the Tenant be afterwards distrained for those Services, he shall have a writ of Mesne. But it is a question whether he shall recover damages in that writ. But it seemeth he shall have damages, because the Mesne shall recover damages against the Lord, if he will put his Cattel in the Pound for the Tenant, and sue a Replevin, Secand yet not distrained in his default is a good Plea in a writ of Mesne. And if he pay the Services, he is not distrained in his default: for if the Mesne grant unto the Tenant to acquit him after the Tenure made, he shall have a writ of Mesne thereupon, as I conceive.

4 E.4.35. Billing.acc. 14 E. 3. Meine 8.

And the Husband and Wife shall have a writ of Mefne I where they are distrained for the Lands of the wife.

12 E.3. Mefne 12. 10 E.3.5S. ibid. 21. 8 E 3.26. Mefne 19. If the Mfre grant the Mefnalty for life, and the Tenant K attorn, the Tenant shall not have a writ of Mefne against the Grantee for life. But Tenant in tail shall have a writ of Mefne: and ancient Demessie is a good Plea in a writ of Mosque.

40 E.3.7.

And a writ of Me ne lieth against Tenant for life where the remainder is over in Fee: and the writ of Messe shall be maintainable against the Heir of the Meine where his ancestors

ancestors have granted the Services of the Tenant by fine, if the Tenant hath not attorned according to the fine: for he shall not be compelled to attorn without granting acquital unto him: and if he grant acquital, &c. he shall have a writ of Melne upon that Grant; and yet it commencethafter the Te- 39 H.6.29. nour.

38 E.3.34.

And if the Tenant be distrained for the relief of the Mesne, or for reasonable aid, &c. he shall have a Writ of Mefne against him.

If a man be Tenant by the curtefie of a Mesnalty, &c. if the Tenant be distrained, the Writ of Mesne shall be sued against him in the Reversion, and not against the Tenant

by the curtefie. H. 4. E. 2.

A Seigniory is granted unto the Husband and Wife, and to Melne 52. the Heirs of the Husband, and in a Per que fervitia fued by them, the Tenant will notattorn, unless they will grant to acquit him, &c for which the Husband grants for him and his Heirs, to acquit the Tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of Mefne against the Husbands Heir, during the life of the Wife who was Tenant for life, and good. Quad Ve. H. 5. E. 3.

Mefne 56.

And in the time of E. I. the Tenant brought a writ of Mesne, because he did not acquit him of a Rent charge de. manded, ochecause he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable.

And an Abbot fued a writ of Mesne, by reason of the con- 5 E. 2. firmation made unto him in Frankalmoigne, and it was Mefne 64.

maintainable. H. 2. E. 2.

If a man have Judgment to recover his acquital in a writ And a Scire of Mesne, if he be not afterwards acquitted, he shall have upon facial athe Recovery a Distring as ad acquiet and um against the Mesne, gainst the if it be three or ten years after the Judgment given; and that Mefne 7. is given by the Statute of westmin. 2 cap. 9.

If the Meine do acknowledge acquital by fine, and after he fueth a Scire facias thereupon, and he appeareth not at the return of the writ, then shall issue a writ of Distring as ad acquietandum, &c. and an Alias & Pluries, &c. untill he appear; and if he come upon the Distringas, and cannot plead any thing, but that he ought for to acquit him, then the Plaintiff shall recover damages against him.

And if the Auncestor do acknowledge an acquital in a 46 E.3.31. Court of Record, the Tenant shall have a Scire facias against 14 E. 3. Mefne 7.

the Heir to acquit him without other specialty, &c. And if a manrecover acquital in a Writ of Mesne, &c. 46 E.3.31.

he shall after have a Distring as ad acquiet and un, and if he In their cases le y coint Institute to livo. Writ de Plegiis acquietandis.

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do not appear, he shall be forejudged by default of his Mesnalty; and so if he appear, and it be found by Verdict against him, he shall be forejudged.

Old Na-Brev. 83. 11 E.3. Br. fuit 4 E.3.

And a man shall have a Writ of Mefne to acquit him of suit A unto a Hundred which the Mefne ought to do by reason of his Mefnalty, and not by reason of Resiancy, &c. And the process in a Writ of Mesne is Summons, Attachment; and Distringas; B and if the Defendant hath not any thing in the County by which he can be distrained, Then the Plaintiff may surmise that he hath Affets in another County, and pray a Distring as thither, and he shall have it by the Statute; and upon that he shall be forejudged, &c. if he do not appear, and the Writ be served and returned against him. But that is given by the Statute: for at the Common Law he shall not have but Distresse infinite in the same County where the Writ was brought, and that is in the County where the Land is; and at this day he may choose whether he will sue the Process at the Common Law, Distress infinite in the County, or the Process which is given by the Statute, Summons, Attachment, and the Grand diffress, which shall have day to answer by such times as two Counties may be holden, in which the Sheriff shall make proclamation that he come to answer the Plaintiff; and if he do not come, & the Writ be returned, then he shall be forejudged

### Writ de Plegiis acquietandis.

THE Writ de Plegiis acquietandis lyeth, where a man be- C comes Pledge or Surety for another to pay a certain funi of money at a certain day, &c. if the Party doth not pay it at the day, &c. If he who became Surety be compelled to pay the money, he shall have this Writ against him who ought to have paid the same. But it hath been a question whether this writ lieth without shewing a specialty; and it feemeth reasonable that it be maintainable, although he have not any specialty to prove it. writ as it feemeth is given by the Statute of Magna Charta, Ve. 22. Eig. cap. 8. which is; Quod fi plegii voluerint, habeant terras & tenementa debitoris quouque fit his fatisfact. de debito, quod antea pro fe co folverint. And there it is not spoken of any writing made betwixt them; and if he have a writing, Fitz pledges then he may have remedy thereupon by the Common Law, or by Writ of Covenant, or Debt; and then that Statute needed not to have been made. And Pafe. 43. E. 3. 10. it is adjudged, That the Writ de Plegiis acquietandis lyeth London was without any specialty shewed thereof, and it seemeth good

Dy. 378.

9. there it was alledged that the to methos fuch.

reason: because the Statute makes the Tie in that Case, and that appeareth by the Register, because Writs are given for the Executors of him who became pledge, and against D him who was the Debtor, because their Testator did not acquit his Sureties , &c. And this Writ is Vicontiel, and may be fued in the County before the Sheriff, or in the Common Pleas by a Pracipe. And the form of the Writ is fuch:

Rex Vic. &c. Pracipimustibi, quod Jufticies A qd. jufte, Gr. acquiet. B de 20 s. unde posuit se in plegium 5 s. C. & eum nondum acquietavit, ut dic. sicut rationabilit. monstrare poterit, quod eum inde acquietare debeat, ne amplius, &c. pro defectu Just. &c. And the form of the Writ for the Common Pleas is fuch : Rex &c. Pracipe A quod juste, &c. acquietet B de cent.marcis, unde posuit se in pleg versus C & eum nondum acquietavit, ut dic. &c. & nifi, &c. Vel fic pro Executoribus, quod acquietet B & C execut.testamenti D de 10 l. unde posuit pradict. D in pleg. versus, &c. & eos nondum, &c. Vel fic versus Executores, Prac. A & B,&c. execut.testament. & c.qd.juste,&c. acquietent E de, &c. unde idem E posuit se in pleg.versus D & eum nondum. &c.

And if a man become Surety for another in the Exchequer to accompt for him, and doth not, he shall have a Writ against him to discharge him of the accompt, and the Writ is:

Rex, &c. De acquietando A de quodam compoto quem præd. Ve.39 E 3: B, pro sede tempore quo idem A fuit ball. libertatis Is. reginæ 9. by Knevt. Angl. matris nostr. in com. D coram Thesaur. & Baron. nostris de 12. the plt; Scac. reddere manucepit, un. posuit eumin pleg. versus nos in ought to Scac. præd. & eum nondum acquietavit, &c.

And if a man become Surety for another to pay a certain Writ first fum of mony, or to do other thing, &c. so long as the prin- against the cipal Debtor hath any thing and is sufficient, his Sureties party, and shall not be distrained by the Statute of Magna Charta: and fufficient, if they be distrained by the Sheriff, &c. they shall have a then against special Writ upon the Statute for to discharge them. And the pledges. the Writshall be such:

Rex Vic', &c. Monstraverunt nobis A & B, quod cum ipsi cap. 8. devenissent pleg. C versus D de quadam sum. pecun. in quaidem C præfat D tenebatur, acidem C fatis babeat, unde predict. debitum solveret, tu nibilominus ipsos A & B distring. ad solvend. præf. D pecuniam predict. Et quia iniuftum eft, quod plegii aliqui ad solution. debiti compellant. quam diu principales debitores jufficient. habeant, unde debitum fuum reddere poffunt, Tibi pracipimus, qd.C. distring. ad prad. pecuniam solvend. & praf. pleg. suos pacem inde habere permittas & averia sua,

have the

Mag. Charts

fi que ea occasione ceperis, fine dilatione deliberari fac. Tefte. &c.

And it seemeth that this Writ lieth, where a man recovereth against the Sureties in the County, and the Sheriff diffrains them to pay the debt, where the principal is suffi-But if he fue the Sureties in the Common Pleas, where the principal is sufficient to pay the debt, &c. Now whether the Sureties may plead that, and aver that the principal Debtor is sufficient to pay it, Or whether they shall have a Writ to the Sheriff not to distrain them, if the principal be sufficient. Quere of those Cases. process in the Writ is Summons, Attachment, and Distress.

# [1387 Writ of Detinue.

Writ of Detinue lieth, in Case, where a man deliver- A eth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; Then he shall have an action of Detinue of those Goods and Chattels; and so if a man deliver Goods, or mony put up in Bags, or in a Cheft, or in a Cupboard to deliver unto another, and he will not deliver the Goods, or the mony in the bags; he to whom they should be delivered, shall have a Writ of Detinue for those Goods, &c. But if a man deliver mony not in any Bag or Chest, to redeliver back, or to deliver over unto a stranger; now he to whom the mony shall be delivered, shall not have an action of Detinue for the mony, but a Writ of Account; because Detinue ought to be of athing which is certain; as of mony in bags, or of a property till Horse, or of a hundred Cows, or such certain things. And B this Writ may be vicontiel, and shall be fued before the Sheriff in the County if the Plaintiff please; or he may fue it in the Common Pleas, and the form of the Writ in the Common Pleas is:

bail a thing to bail to I.S. he fhall have Detinue Prifot, yet he hath no agreement, 39 H.6.44. Laicon. contr.

If a man

7 H.4.13. Detinue was

brought of a Bag with 20 l. and by Martia, 4 H.6. 1 & 2. If a man bail 20 l. to rebail Detinue lieth, and not accompt contr. if it were per accompt rendr. 6 E.4.11. Detinue of four quarters of Barley, and doth not fay in Sacks; and yet good.

> Rex Vic. &c. Prec. A, &c. qd.&c. redd. B unam chartam quam ei injufte detinet, ut dicit, & nifi, &c. Vel fic, Quod redd. B unam pixidem cum tribus scriptis obligat. in eadem pixide contentis sub sigillo predict. B consignat. And the Rule in the Register is, quod in brevi de Chartis reddendis semper debet

debet poni cert. numerus Chartar', vel scriptor. And a man may Note, that in have a Writ of Detinue of one writing, and the Writ shall 21 H.26,29. be, Præc.A qd. creedd. B quoddam scriptu, per quod B omnia the Writ bona & catall. sua in manerio de N nuper exist. I de L dedit bona & Ca-ex concessit, qd. ei injuste, &c. And the form of the Writ in raka, and the County is such: Rex Vic', &c. Præc. tibi, quod justicise A declares of quod juste, &c. redd. B unam Chartam, vel tres Chartas, vel unu three deeds, scriptum obl. vel conventionale, vel acquietan. veltestam, contr. if of vel chirographu, quod, quas vel quæ ei injuste detinet, ut dions. 19 E.3. ott, sicur rationabilit. monstrare poterit, quod ei ea redd. debeat, Detinue 49. The Writ The

And if a man fue in any Court a plaint of Detinue for any was Uname Charters which touch and concern Freehold, if it be not in Chartam, the Common Pleas by the Kings Writ, the defendant may And the fue a Prohibition; to prohibite them, &c. and to furce afe, &c.

confirmatiRex ball. I de R fal. Cum pl. ita de detentione chartarum feu
foriptorum liberum tenementum tangen. in aliquibus cur. quæ
record.non habent, fecundum legem & consuetud. Regni nostri
sine brevi nostro placitari non debeant, ac W, B de eo quod idem
B redd. præfat. W tres Chartas coram vobis in cur. predict. Dom.
vestri de R sine brevi nostro implacitet, ut accepimus, vobis præcipimus, quod si ita est, tunc placito illo coram vobis in curia
predict. sine brevi nostr. ulterius tenend. supersedeatis omnino, &
præf. W dicatis ex parte nostra, quod breve nostrum de detentione chartarum predict. versus præf. B sibi impetret, sibi viderit
expedire. Teste, &c.

And the Plea may be removed by Pone out of the County at the Plaintiffs fuit, without cause shewed in the Writ; and at the suit of the Defendant he ought to shew cause in the Pone: and this clause shall be in the end of the Writ; Fiat executioistius brevis, si causa sit vera, aliter non. Sc.

E And if a man find my goods which I have loft, I shall 38 H.6.24, have a Writ of Detinue of them.

F And if a man giveth Lands in tayl by deed indented, and the Donee dieth without heir, the Donor shall have a Writ of Detinue for that part of the deed indented which the Donee had.

And foif Lands be given to two men and the heirs of one of them; If the Tenant for life dieth, he who hath the Fee 7 E.4.26. Shall have a Writ of Detinue for that deed.

G VIf a man make a Feofment in Fee of his Land by deed, 18 E 4.14. yet the Feoffee shall not have the Charters concerning the the Feoffee Land, but the Feoffer shall keep them, if he do not give shall not them to the Feoffee; but against a stranger the Feoffee Writ against shall have an Action of Detinue for those Charters which a stranger.

This is where y troff of his to be warrant as side:

H.7. 10.

concern the Lands, if he cannot make title by the Feoffor. or those who claim title by the Feoffor.

And the Heir in tail shall have a Writ of Detinue against H the Discontinuee for the deed of entail by which the Land was given.

9 H.6.58. The heir ought to make Title to the Land. otherwife the Executors shall have them. 19 H.6.41. acc.

9 E.4.52.

9 H 6. 15. 10 E.4.9. 39 E.3.Br.

Chart. 38. 10 E.4.9. 10 E.4.14

The Lord by for Charters.

And if a man maketh a Feofment in Fee of his Land I which is Feefimple, his heir shall have the Charters which concern the same Lands, and not the Executors of the father.

If a man make a Leafe for years and afterwards confirms K his estate in Fee, the heir of the Feoffee shall have the deed of the Lessor for years, as well as the deed of confirmation, because, that the deed doth make the confirmation good: And so of every deed which maketh his title, or a release, or the like, without which his title shall not be sure, and he shall have an Action of Detinue for them.

And the heir shall have a Detinue of Charters, although L he hath not the Land; As if I be enfeoffed with warranty, and I enfeoff another with a warranty in Fee, my heir shall have a Detinue of that deed by which I am enfeoffed, because he may have advantage of the warranty.

And if my Father be diffeifed and dieth, I shall have a Escheat shall Detinue for the Charters, although I have not the Land, have Delinus and the Executors shall not have the action for them.

And if a man have goods delivered to him to deliver o- M ver to another, and afterwards a Writ of Detinue is brought against him by him who hath right unto the goods; Now if the defendant depending the action deliver the goods over to whom they were bailed to him for to deliver, the same is a good bar in the Action, because he hath delivered them For Detinue according to the bailment made unto him.

See 44.c.

And after divorce made betwixt the Husband and the A 13 H.3. Pro- Wife, the Wife shall have a Writ of Detinue for the goods hibition 21. given with her in Frankmarriage, which see M.24 E.I. And the process in Detinue is Summons, Attachment, and Distress.

## Writ de recio de Custodia terra & haredis.

THe Writ de Custodia Terra & Haredis lieth, where the B Tenant holdeth of his Lord by Knights fervice, and dieth in his homage, and a stranger entreth into the land, and taketh the body of the heir, The Lord of whom he holdeth the land shall have a Writ of Custodia terra & baredis; and the Writ is such:

Rex

Rex Vic' & c. Præc. A quod, & c. redd. B custod. terr. & hæred. C quam ad ipsum B pertinet, eo qd. præd. C terr. suam de eo tenuit per servitium militare, ut dic. & c. & nis, & c.

C Aliter de hæred, terr. Præc. A qd. &c. redd. B & C uxorem ejus W filium & hæred. E, cujus custodia ad ipsos B & C pertinet, eo qd. pd. E terram suam de præst. C,&c. Vcl sic: de l. patre pd. C cujus hæres ipse est & tenuit per servitium militare, ut dicit. &c. & niss. &c.

And a Writ of the Lands only is such: Prec. A qd. &c. read. B custod unius virgat terr. cum pertin. in R que ad ipsum pertinet, eo quod C terram illam de eo tenuit per servitium militare, ut dic. &c. Vel sic: ratione dimission. qd. ad ipsum B pertin. quam A de quo predict. C terram illam tenuit per servic. militare, inde secit eid. B, ut dicit, &c.

And if a man have a Wardship by reason of a ward, and he is taken from him, the Writ shall be thus: Quod reddat. B I filium & hared. C, cujus custodia ad ipsum pertinet ratione custod. terr. & hared. R de quo pradict. C terram illam tenuit per servic. militare, inde secti eid. B, ut dicit, &c.

And if the Lord Paramount will shew a Writ of Right of Ward for the Services and Rent, and the heir of the Mesn, he may have a general Writ of the land and heir, if he will, or a special Writ thus:

Præcipe A qd. Sc. reddat B custodiam decem solid redditus, & hæred. C quæ ad ipsum pertinet, eo quod prædist. C tenementum unde redditus ille provenit, de eo tenuit per servitium mi-

litare, ut dicit.

And this Writ may be fued in the County before the

Sheriff by a Justicies, and then the Writ is such:
Pracipimus tibi, qd. justicies A quod reddat B custodiam
terr. & bæred. C, qua, & c.ut dicit, sicut rationabiliter, & c.

And the Plaintiff may remove the same by a Pone withoutcause shewed, and the defendant ought for to shew cause in the Pone, as he shall do in a Replevin.

And it appeareth by the Register, That the Guardian in Socage shall have the Writ of Right of Ward of the heir alone, or of the Land alone, or of both; for the heir thus:

Rex,&c. Pr.c. A quod, &c. redd, B W filio & hered. C cujus custod. ad ipsum B pertinet, eo quod pr.edict. C terram suam tenuit in socagio, & pr.edict. B propinquior est heredi ipsus C, ut dicit.

And there is the like Writ for the Land. And the reason and cause that he shall have this Writ seemeth to be, because that for the land he cannot have other remedy, if he cannot enter into the Land: and yet I conceive that B b 3 Guardian

Guardian in Socage shall not have a Writ of Right of ward for the Land, because he is accomptable unto the heir for the same, which proves he hath no right unto the land, but as Bailiff.

And the Guardian in Socage shall have a Writ of ward for cause of wardship, where his Guardian ought to have another Infant in Ward, because he is next of blood unto him to whom the Inheritance cannot descend; and the Writ

is fuch:

Rex &c. Præc. A quod,&c. red. B custodiam terr. & hæred. C, quod ad ipsum B pertinet ration.custodiæ J filiæ & hæred. D qui terram suam tenuit in socagio, in manu ipsius B existen. eo quod præd. B terram suam tenuit in socagio, & prædict. B

propinquior eft hæredi ipfius J, ut dicit, Et nifi, &c.

And it seemeth, That a Writ of Right de communicustodia I was at the Common Law, and as well for Guardian in Socage for the body of the heir, as for Guardian in Knights service. But the Writ of Ravishment of ward was not at the Common Law for the Guardian in Knights service, but the same was given by the Statute of west. 2. cap. 35. And by the Equity of that Statute, Guardian in Socage shall have a Writ of Ravishment of Ward as well as Guardian by Knights service; and by the same reason he shall have a Writ of Right of ward at the Common Law, as Guardian in Socage shall have.

And if the Mesn hath two daughters, one within age, K and the other of full age, and dieth; and the Lord hath the wardship of her within age, and afterwards the Tenant dieth, his heir within age, now the Lord Paramount, and the Sister of full age who is one of the Mesns, shall have a

Writ of Right of ward in this form :

Præc. A, & c. quod, & c. reddat B uni filiar. & hæredum W & P de E, custodiam terræ & hæred, R quod ad ipsos B & P pertinet, eo quod præd. R terram suam de præf. B & M soror. ejusam B altera fil. & hæred. ejusam W infraætatem, & in custodia prædist. P existen. tenuit per servitium militare, ut dicunt. & nisi. & c.

And it appeareth in the Register, That the Writ de L. Ejectione Custodiæ lieth for the Land, and for the heir together, for the Writ is such:

11 H.4.64, 65. If the Ejectment

of Ward be brought of Land only, the party must shew the Certainty of the Land; But if it be of the Body and Land, the Writ general, de terris & haredis, is good.

22 Eliz. Dy 399. It tieth not but of Land only.

Rex Vic. &c. Si A fecerit, &c. tunc sum. &c. B, oftenfur. quare cum custodia terre & hæred. C, usque ad legitim. ætat. If he who har. prad. ad ipsum A pertineat, eo quod idem C terram suam ejects alien de eo tenuit per servitium militare, ac idem A in plena de paci- to another, fica feisina ejusdem custodia diu extiterat, predict. B prædict. have this bæred. infra ætatem exiften. ipfum A à cuftodia illa violent. writ against ejecit, ut dicit, & habeas ibi fum. & hoc breve, &c.

him who ejected him ;

and yet the party shall recover Land to his Writ. 12 H. 4. 10. by Hank ford; so if one eject the Ejector, he who was first ejected shall not have this Writ, no more than one shall have Trespass, &c. against the second Trespassor, 39 Aff.9.

Another Writ for the Land only, where he hath the same

by grant of the Guardian, thus:

Rex Vic. &c. Si, A fecerit, &c. tunc sum. &c. quare cum custodia unius virgat. terræ cum pertin. in D, usque ad legitimam etatem ffil. & hæred. C ad ipfum A pertineat, ratione dimissionis quam R, de quo prædict. C terram suam tenuit per fervit. militare inde fecit eidem A, ut dicitur, ac idem A in plena & pacifica seisina ejusdem custod. din extiterit, idem B bered. prædid. infra ætat. existen. præd' A, à custod. præd. violenter ejecit, ut dicit, &c.

Another Writ when a man hath a Ward of the Kings grant, and he granteth the same over unto another, Then

thus as above:

Ration. dimissionis, quam C qui custod. illam habuit ex commission. Dom. Ed. nuper Regis Angliæ prædecess. nostri, de quo præd. R terram suam tenuit per servitium militare, inde fecit eidem B,&c. ac idem B,&c. Or thus, Si B fecer.&c. tunc Sum. B, respondend. tam nobis quam præfat. G, quare cum nos commiserimus praf. E custod. terr. & tenement', que fuer ] de C defuncti, qui de nobis tenuit in capite, & que ratione minoris etat. P confang. & hered.predict. I in manum nostram extiterunt, babend. cum omnibus ad custod. ill. spectantibus usque ad legit. atat. hared. pradict. & idem E in plena & pacifica seisina ejusdem B custod. prætext. commiss. nostr. pred. din extitisset, idem B bæred. pred.infra ætat.existen.pred. A à custod. cent. solid.redditus cum pertin. in H inde violenter ejecit, ut dicit.o.c.

And Guardian in Socage shall have a Writ de Ejellione 13 H.4.17. Custodia, as appeareth by the Register; and the like reason, as well as he shall have a Writ of Ravishment of ward for the body, he shall have a Writ of Ejectment of ward for the Land.

And if a man have the Patronage of an Abby or Priory, D and hath right to have the Temporalties during the time of vacation of them, if he have the policifion thereof, and be oufled, he shall have a Writ de Ejetione Custodia; and the Writ shall be such:

Oftenjur. quare cum custod, priorat, de B ad ipsum A in vocationibus ejustem prioratus pertineat, ac idem A in plena & pacifica seisina ejustem custodia in ultim, vacatione, ejustem custod, in ultima vacatione prioratus prædict diu extiterit, præd. B præf. A, à custodia illa violenter ejecit, &c.

And by the Register it is said, That the Writ of Right may be sued de Custodia Priore, in time of vacation, &c.

thus:

Kex,&c. Præc.&c. quod,&c. redd.B cuftodiam Prioratus de

And that is grounded upon the Statute of Magna Charta,

cap.2. Quod omnes Patroni Abbathiarum, &c.

And there is another Writ of Ward for the body, which

And there is another Writ of Ward for the body, which is called a writ of Ravishment of Ward: and that Writ lieth as well for Guardian in Socage as for Guardian in Knights fervice.

And if a man have one in ward because his Ancestor E held of him by Knights service, and the Ward is ravished and taken from him, he shall have that Writ of Ravishment of Ward.

And so shall the Grantee of the Ward, or his Executors F if he be taken from them; and the form of the Writ for the Lord of whom the Ancestor of the Ward held, is such:

Rex Vic. &c. salut. Si A fecerit, &c. tunc pone, &c. B quod sit coram Justiciariis nostris, vel coram nobis tali die ubicunque. &c. ostensur. quare J sil. & hæred. C infra atalem existent. cujus maritagium ad ipsum A pertinet, apud N inventum rapuit & abduxit, contra voluntatem ipsius A & contra pacem nostram, & interim diligenter inquiras, ubi hæres ille sit in baliva tua, & ipsum, ubicunque suerit inventus, cap. & salvo & secur. custod. ita quod eum habeas coram pras. Justic. nostris, Or thus, coram nobia, &c. ad pras. terminum ad redd. cui præd. A & B reddi debeat, & habeas. &c.

And if the heir be ravished and carried from County into

County, then the Writ shall be thus:

Rex Vic.&c.Quest. est nobis A prædict.B C fil. et bæred. I infraætat. existent. et in custodia sua existent. apud E in Com. Linc. rapuit, et de Com. illo usque I in Com. tuo abduxit, contra velunt. ipsius A, et contra pacem nostram : et ideo tibi præcipi-

m45,

mus, quod prædist.hæred.ubicunque in balliva tua inven.poteris, capias et falvo et secur. custodias, ita quod eum habeas coram Justic. nostris apud.&c. tali die, quem diem idem A habet vers. præfat.B ad redd. cui de sure reddi debeat,& habeas,&c.

And the form of the Writ for the Guardian in Socage is

Rex,&c. Si A fecerit, &c. tunc pone,&c. B, &c. quare cum tuftodiaterr. & hæred. Cufque ad legitimam ætatem ipsus hæredis ad ipsum A pritineat, eo quod prædiët. C terram suamtenuit in socagio, & prædiët. A propinquior est hæredi ipsus C, ac idem A in plena,&c. diu extiterit, prædiët. W B filium et hæredem prædiët. C infraætatem, & in custodia ipsus A exist. apud N invent. vi et armis cepit, et abduxit, et alia enormia ei intulit, ad grave damnum ipsus A et contra pacem nostram. Et habeas ibi nomina pleg. & hoc breve. Teste,&c. Vel sic: Vi & armis rapuit, et ipsum sine licentia et voluntate ipsus A maritavit ad grave damnum, &c.

A And if the Infant be in the cuftody of the Lord, and during his nonage he enter upon the Lord, and ouft him of the land which he ought to have in Ward, Then the Lord shall have a Writ of Intrusion of ward against him, and the

Writ shall be such:

Rex Vic. &c. Si A fecerit,&c. tunc sum. &c. I filium et hered. C, oftens. quare cum custod. ad ipsum A usque ad legitimam ætatem heredis prædict. pertineat ratione dimissionis, quam L de quo prædict. C, terram suam tenuit per servitium militare inde fecit præfat. A, et que A in plena et pacifica feifina, &c. extiterit, predict. I infra ætatem existens, se in terramprædict. intrusit, et custodiam illam præfat. A detinet, ad damnum ipfins A non modicum et gravamen, &c.ut dicit,&c. Et habeas, &c. Vel fic: ostens. quare custodia manerii de T cum pertin. usque ad legitimam ætatem præditi I, ad ipsum A pertinuisset ratione dimissionis, quam B cui H de quo et Alice uxor ei pred. C Manerium illud tenuit per servitium militare, illud dimisit, inde fecitpe f. A,&c. ac idem A in plena, &c. prædict. I dum infra ætatem fuit, fe in manerium prædictum intrufit, & cuftod. illam præfat. A hucusque detinuit, ad damnum,ut dicit, & habeas oc.

And the Writ lieth where the Tenant holdeth of a man and his wife by Knights fervice in the right of the wife, and the Tenant dieth his heir within age, and the Hußand granteth the wardship of the land unto another who granteth it over unto another, upon whom the heir intrudeth,

Bcc.

And

2 H.7.9. 31 Aff.26. Br.Affife 321. And if the Lord have the custody of the Heir within age, D and tender him a convenient marriage, and he refuseth it and intrudeth, Then the Lord shall have a Writ against him for to recover the value of the marriage, and also to recover the land, which shall be such:

Per Victore Si A focavit dos

Ve.8 Eliz. Dyer 255. the tender traverfed. Rex Vic' &c. Si A fecerit, &c. tunc summ. &c. B, &c. oftens. quare cum maritagium prædict. B ad ipsum A pertineats eo quod prædict. B terram suam de eo tenuit per servitium militare, & idem A prædict. B dum fuit infratatiem in custodia sua competens maritagium absque disparagatione, juxta sormam fatuti de communi consilio regni nostri inde provist, sapius obtulerit, idem B maritagium illud renuens præsi. A de maritagio suo contradicit, &c.ad grave dumnum, &c.

And it appeareth by the Writs above aid, That the Guar- E dian shall have a Writ of intrusion of VVard against the

heir, as well at his full age, as during his nonage.

There is another Writ de valore maritagii for the Lord F or for his Executors against the Heir without speaking of any intrusion made by the Heir into the land; and the Writ is such:

Rex Vic', &c. Si A, &c. fecerit, &c. tunc summ. &c. quare cum maritagium ipsius L, &c. (usque ibi) obtulerit, præf. L maritagium illud renunciet de eodem maritagio præfat. A cum jam ad plenam ætatem pervenerit satusfacere recusavit, & adhuc recusat minus juste, ad damnum, &c. Et contra formam

ftatut.

And if the heir be in the Lords custody, and doth marry G himself within age without the assent of the Lord, and when he cometh of still age, he entreth upon the Lord, and puts him out of the land, Then the Lord shall have a Writ of forseiture of marriage against him, for the double value of

the marriage; and the Writ shall be such:

Si A fecerit, &c. tunc summ. C sil. & bæred. D, quod sit H coram Justiciar. &c. ostens. quare cum maritagium insus C una cum custodia unius acr. ter. cum pertin. in N, ad insum A pertin. ratione dimission. quam L, quod custodiam illam habuit ex dimissione F cui G eam dimist, de quo prædict. D terram suam tenuit per servitium militare, inde secit præs. A, &idem A præs. C dum suit instra ætatem & in custodia sua competens maritagium absque disparagatione juxta sormamstatuti de communi constito regni nostri inde provisi sepius obtulerit, idem C maritagium illud renuens, se sine licentia & voluntate institus A maritar. secit, & se in terris prædictis (præs. A promaritagio prædicto non satisfacto) intrust, & de maritagio prædicto eidem A satissacere contradicit, ad grave damnum

B

ipfius A,& contra formam Statuti prædict.ut dicit,& habeas, &c. lumm.&c. Teste, &c.

And that Writ lieth where the Lord granteth the Wardfhip of the heir and land of his Tenant unto F, who granteth the same heir and land unto L, who granteth the same
over unto the said A the now plaintiff, who tendereth marriage unto C and he refuseth the same, and marrieth himself
during his Nonage, and at his sull age entreth into the land,
the Marriage not satisfied, &c.

K And otherwise for the Lord against the Tenant himself

thus:

Si A fecerit, &c. summ.&c. B fil. & hæred. C, quod sit coram Justiciar. &c. ostens. quare cum maritagium prædictum B ad ipsum A pertineat, eo quod prædict. C terram suam de eo tenuit per servitium militare, & idem A competens maritagium absque disparagatione, &c. & prædict. B, dum infra ætatem suit, frequent. obtulerit, idem B maritagium illud admittere recusavit, & sine licentia & voluntate præf. A se maritavit, &c. adgrave damnum.&c.

And the Lord may have such Writ of Forseiture of marriage against the heir of the Mesn, if he marry during his Nonage, and enter into the Mesnalty, or take the Rent and Services of the Tenant paravail, and the Writ shall be general, as if he were Tenant paravail, &c. not making

mention of the Mesnalty.

A If a man be Tenant in tail, the reversion to the King, and the King doth licence him to alien in Fee, and to take back an Estate unto himself and his wise in tail, the remainder to his right heirs, and he maketh such seosmen, and taketh back an Estate unto himself and his wise in tail, the remainder to his right heirs, and dieth his heir within age; The King, notwithstanding his Licence, shall have the wardship during the life of the wise, for that the Licence doth not give him power to alien the Kings Reversion, &c. And when the reversion cannot be discontinued, the estate tail cannot be discontinued, but by his death the heir may enter into the Land, and so the King may in his Right.

If a man have lands for life, the remainder in Fee unto v. Dyers, another, and he in the remainder dieth, his heir within & 12. & 132 age, he shall not be in VVard during the life of the Tenant b. C. 2. part for life; because that during his life, the Tenant for life is 92. Tenant to the Lord Paramount, although the Land be holden by Knights service. And the Guardian shall put out the Termor who holdeth for years of the Lease of his Tenant.

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And

And the Statute of Marlebridge in a manner proveth he C may fo do. And there are many old books to prove the fame by Judgments there given; and it seemeth reasonable that it should be so, by the ancient Title which the Lord hath, when he referved fuch Services upon his Feofment, to have the wardship if he dieth, the heir being within

And if the Tenant be diffeifed and dieth, his heir being D C.3.part 35. within age, the Lord shall seise the Ward, and enter into the 41 E.3:18. Br. War. 20.

land upon the diffeifor in the right of the heir.

But if the Tenant doth enfeoff his Son during his non- E age, who doth homage unto the Lord, and afterwards the Tenant dieth the heir within age, the Lord shall not have the Wardship of him, because he hath accepted of him for his Tenant in the life of the Father. But it appeareth by Magna Charta, That the Lord shall take Homage of the heir before he have the Wardship of him, but that is after the death of the Ancestor, and not in the life of the Ancestor,

and fo was the Law taken in Old books.

If a man purchase Lands by feoffment, which are holden F feverally of divers Lords by Knightsfervice, and afterwards dieth, his heir within age, That Lord who first getteth the Good bar in Green, its near within age, there is no priority; But if of Marriage, he purchase lands which are holden by Knights service of one Lord, and afterwards purchase lands by Knights service of another Lord, and dieth, his heir within age, that Lord shall have the Wardship of the heir of whom the land first purchased was holden, for he holdeth of him by in use.21 H, the more ancient seoffment and priority, than he holdeth of the other Lord.

And if a man hold of the King by Posteriority; and holde th Lands of another Lord by priority, and afterwards dieth, C. 5. part 36. his heir within age, the King shall have the Wardship of his body by his Prerogative, not having regard to the priority

or posteriority.

And if a man hold of the King by posteriority, and of another Lord by priority, and afterwards the King granteth the Seigniory unto the Queen for life, and afterwards the Tenant dieth, his heir within age, The Queen shall have the Wardship of the body, not having regard unto the postereversion is riority, because that the reversion of the Seignory doth in the King. remain in the King.

But if the King hath granted the remainder of the Seignory in Fee unto a stranger, Then it seemeth the Queen shall not have the Wardship of the body, for the Seignory

33 H.6.16. Prifot.

14 Aff. Br. Affize 1 92. Com. 133. 36 E. 3. Gard. 11. 31 E.I. Gard.155. Br. Fealty.

in 7 E. 2. Accon fr. Statute 3 1.

So of Land S.B. prerogative 92.

Que eif Plenerty be a good plea against the Queen, where the

> 18 E.3.13: Stamford prerogative 33.

of posteriority,&c. and priority is changed by the Feoff- If he make a ment of the Tenant of the land. As if he make a Feoff-Feofment at ment in Fee of the land which he holdeth by priority, this done to and takes back an estate again of the same, Now he holdeth his use, and takes back an estate again of the same, Now he holdeth and same if the the same land of that Lord by posteriority; whereas he Priority be held it before of him by priority. But if the Lord of whom gone. 2 E.z. the Tenant holdeth by Priority, grant his Seigniory unto Fitz. Gard. another in Fee, and take back again an estate in the Seig- 2.acc. niory to him in Fee,&c. yet the Tenant holdeth of him by priority as he held before, because the pleading of Priority is to fay, That he holdeth of fuch a man and his Ancestors, or of those whose estate he hath in the Seigniory, per antiquius feofamentum,&c. than he holdeth the other land, fo that the Feoffment of the land doth make the priority. And if the Tenant do fore-judge the Mein, of whom he holdeth by Priority, &c. Yet he shall hold by Priority of the Lord Paramount, as he held of the Mein before, &c.

The Mayor and Aldermen, and Chamberlains by the Custome of London shall have the custody of the Orphan in the City, and if they commit the Cuftody of fuch Orphan to another: He shall have a Writ of Ravishment of Ward against him who taketh the Ward out of his possession.

And if the Guardian marry the heir after the age of 14 years, and afterwards the heir is taken by a stranger, the Guardian shall not have a Writ of Ravishment, &c. because he hath had the effect of his marriage.

If a man have a Ward in the Right of his wife, although Tenant in the wife dieth , yet the Husband shall have the Ward , be- tail grants cause it is a Chattel vested in him.

his estate of a Mannor

unto which Advowson is appendant the Church void, Tenant in tail dieth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Termexpire. 9 E 3. Quare Impedit 18.

Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the services of the Feoffee, then he shall not have the Wardship of the Tenants heir, nor shall overfee the Collusion.

But if a man at this day maketh a Feoffment in fee to his use, and the Lord accept the Services of the Feoffee But the Ceyet if the Feoffor who hath the use dieth, his heir within fluy que use age, the Lord shall have the Wardship of his heir by the of a Seignio-Statute of 4 H.7.cap. 17. ry thall not have Gard

for the Feoffees before 27 H.8. were Lord.

## Writ of Right of Ward.

And if a man lease Lands for term of life, the remainder A to the Husband and Wife in tail, the remainder in Fee to the heirs of the Husband, and the Husband and Wife die, his heir within age being Tenant for life, his Heir shall not be in ward

If the Kings Tenant giveth lands in tail without the B Kings Licence, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in tail dieth, his heir within age, the King shall have the Wardship of him, as seemeth by the Statute of 34 E. 3. cap. 15. And this acceptance of the Services shall not conclude the King; for the King shall not be concluded, &c. if he have matter to shew which may serve him. And yet in Anno 4 H. 6. it is adjudged contrary; and therefore Quare the Law in that case.

And the lands of the wife within age shall be in Ward, C although her Husband be of fullage.

And if a woman be past the age of fourteen years at the time of the death of her Ancestor, she shall not be in

The Committee of the King shall not have a Ward by D reason of the Ward, but the King shall have the same, because the King remaineth Guardian, &c. and the Heir shall fue Livery.

If a Bishop have Title to have a Ward, and doth not seise E 2 H.4.19.ac him in his life time and dieth, the Successor shall have 40 E.3.14. that Ward, and shall seise him, &c. Otherwise it seemeth if contra. the Bishophad seised him. ro Eliz.

If the heir female be married by the Lord before her F age of fourteen years, and afterwards the Husband dieth, the heir female shall not be married again by the Lord, predeceffor &c. And by the same reason he shall not have a Writ of Ravishment of VVard, if another man do ravish him afterwards.

If the Grandfather have a Son, and the Son taketh a wife G and hath issue and dieth, the Mother of the issue shall have the Wardship of the Child which is her own Child, and not the Grandfather, although the iffue may have the land which ought to descend to him by the Grandsather, and

C.6. part 22. although that the mother shall not have the land. Hill. 31. 11 H.7.12.

If an Infant recover land by a Writ of Dum non fuit com- H 7H.4-12.ac. pos mentis, he shall not be in Ward; and so it seemethif he do recover by a Formedon or other Action Ancestrel, where he could not enter, because his Ancestor did

contra. 35 H.8.

27 H.8.26. Fitz herbert Ve. 34 &

Dyer 54. 4 H.6. 19.

shall have the Ward.

Dyer 277.

the Execu-

tors of the

contr.

not die Tenant to the Lord, &c. nor in his Homage. And a man may feife his ward, although he be apprentice

or inservice of another.

But if the Tenant maketh a Feofment by Collusion, The Lord ought to recover the Land by a Writ of Right of Ward, before he shall have a Writ for the Ravishment of the Ward,&c.

If a man be Tenant by the Courtefie of a Seignory, the heir shall not be in Ward during the life of the Tenant by

the Courtefie.&c.

But if a man have iffue a Son, and afterwards he taketh a Wife who hath lands holden by Knights service, and hath if ue by her, and afterwards the Wife dieth, if the Husband be not Tenant by the Courtefie of the land, then the Hufbands younger Son shall be in VVard during the life of his Father,&c.

If an Infant be married in the life of his Father within the age of Confent, and afterwards the Father dieth, the 156.4c. but Infant being within the age of Consent; The Lord shall shall not have a Writ of Ravishment of VVard for the Infant, be- have Forfeicause he may perhaps disagree unto the marriage.

And the Lord of the Villain shall have the VVardship of tender and the land and body of the heir of a Villain, if he feise him refusal. before the Lord,&c. otherwise not of the land.

If lands descend unto the wife, and afterwards the wife the King. hath iffue by her husband and dieth, before the husband 40 Aff. 7. entreth, so that he shall not be Tenant by the Courtesie, Br. Vill. 31. The iffue shall be in Ward if he be within age, and if he be not heir apparent to the Husband; and so if the issue by the wife were a VVoman, and within age, where the husband hath a Son living, that issue within age shall be in VVard, during the life of the husband which is its Fa-

And Pasc. 31 E. 3. The opinion was, That if the Husband have not lands which shall from him descend to his iffue, That then his iffue shall be in VVard for the lands of his VVife, if he were within age, &c. in the life of the Husband: But it seemeth the Law is not now taken to be

Guardian in Socage did grant the Wardship over to a Stranger, and the Grant awarded good. H.26 E. 3. & H. 31

If an Infant enter for a condition broken upon a Feofment 11 H.7.12. made by his Ancestor, he shall be in Ward for that land, if 12 H.7.20. it be holden by Knights service.

tage upon in case of

And

Ve. 2 & 3. Eliz. Dyer 190. And a man or a woman shall have a Writ, Quare filium & haved suum rapuit: Or, Quare filium & havedem rapuit, Or, Consanguineum & havedem suum rapuit, &c. and that by the Common Law.

And the Process in a Writ of Ward appeareth by the Statute of Marlebridge, cap. 7. viz. Summons, Attachment,

and Diffress.

And in a Writ of Right of Ward, if he cometh not at the Diffres, that the proclamation shall be awarded, that he shall have day by which two or three County Courts are holden in the mean time, before the return thereof; and if the Writ be returned, served, and he do not appear, he shall lose the Wardship, and the plaintiff shall by Judgment recover the same.

### Writ of Escheat.

The Writ of Escheat lieth where the Tenant who hath an Estate in Fee-simple, of any Lands or Tenements, and holdeth them of another, and the Tenant dieth, seised witherest nor be out Heir General or Special, The Lord shall have the Writ forseited, because it is nements, after the death of his Tenant, and by this Writ blood. Also he shall nor Estate to the services of the services. Services fall nor Estate the services.

cheat by death, contr. by attainder, 24 E.3.22 Br Escheat. 9 H.7. 37. 7 E.4.11.
12085 Abby or Parish Church be distolved, the Lands which they held shall be Escheat. 21 H.7.39 If a man holderh two Acres by several Services of one Lord, 13:0 he ought to have two Writs of Escheat.

But if Tenant in tail die without Heir, he in the Reversion shall not have a Writ of Escheat, but a Formedon in the Reverter.

Tenant in tail of a Sig. grants the fame, Tenancy Effichear, because the Tenant in tail of Land, the remainder to A his right Heirs, and dieth without Heir, then the Lord of Sig. grants the fame, Tenancy Effected, because the Tenant in tail was Tenant unto the Lord for Fee-fimple that he had in the Land, &c.

dieth without iffue, he in the Reversion shall have Escheat of the Land, because it is come in lieu of the Sig. Si49 E.3.4.3 E.3. Escheat 9. but by his opinion he shall not have Escheat, because the Reversion was out or him at the death of the Tenant.

But if a man be Tenant for life, the remainder in Fee B unto a stranger and his Heirs, and afterwards the stranger dieth dieth without heir, and afterward the Tenant for life dieth: the Lord shall not have a Writ of Escheat, because the 3 H.2. Entr. Tenant for life was Tenant to the Lord, and not he in the 38.7 H.4.17. remainder,&c. But there the Lord shall have a Writ of In-contrait the trufion if a stranger enter in the land after the death of or alien, for Tenant for life.

And if the Tenant be diffeised, and afterwards dieth with- Tenants by out Heir,&c. it seemeth the Lord shall have a Writ of Es- title. cheat, because his Tenant died in the Homage. And in that case he shall have a Writ of Right of Ward, if the Tenant die, his Heir being within age, and by the like reason he shall have a Writ of Escheat.

D If the Tenant dieth without Heirs, and afterwards the Lord dieth; the Heir of the Lord shall have a Writ of Escheat for to recover the Land, &c. for that Escheat made, and shall give a Right unto the Lord to have the Land.

And this Writ shall descend from the Lord unto his Heir, 46 E.3.4.the And this Writ Inall deteend from the Lord unto his Hell, Son brought &c. and the forms of the Writs of Escheats are divers: One Escheat supwhere the Tenant is a Bastard, and dieth without Heir, and posing that then the Writis fuch:

the Tenant held of his

Father, whose heir he is, and exception taken, because it ought to be, qd.de eo tenst.

Rex Vic. &c. Prac. A, &c. quod redd. B 10 acr. terr. cum pertin. in N quas C de eo tenuit, & que ad ipsum B reverti debent, tanguam escheata sua, eo quod præd. E bastardus fuit. obiit fine hæred. ut dicit. &c.

And if he be not a Baftard, but dieth without Heir, then the Writ is: Et que ad ipsum B reverti debeant tanquam escheata sua, eo quod prad. C obiit fine hæred. Vel fic: eb quod præd. C feloniam fecit, pro qua sufpensus fuit : vel pro qua utlagatus fuit : vel pro qua regnum abjuravit, & nisi,&c. And the form of the Writs for the Heir appear in the Regifter.

And the King shall have a Writ of Escheat for lands in London, if the Tenant died seised of lands there without Heir, because the Lands in London are holden of the King: and this Writ he may fue in the Kings Bench, or in the Common Pleas.

And if a man be beheaded for Felony, or die after Judg Or if after ment, before that he be executed by the Officer: yet the judgment he ment, before that he be executed by the content for the be delivered writ shall say, Pro quo suspensus suit, or and it is not material be delivered to the Bish. whether that he be hanged or not.

cheat 10. contrary if he stand mute, 4 E.4.18. 22 H.6.38. Newton, if a man go beyond Sea without license, and taketh wife there, and hath issue and dieth, the Land shall Eschear.

48 E.3.34; Where the Tenant is Utlage of Felony, the Lord hath Election to of Escheat; fuppofing that the Tenant was Utlage, or without Heir.

And the course in the Register was, that if a man were attainted of Felony, that the King did fend a Writ to the Sheriff to enquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the year, ultra reprisas, and that he certifie the same, But the same have a Writ is altered by the Statute of 28 Eliz. 2. Cap. 9. which is, That a Commission be made out unto the Sheriff to take the Indictment: and also there was another Writ appointed by the Register, directed unto the Sheriff to enquire whether fuch House or Land which w had, who was attainted of that he died Felony, were seised into the Kings hand for a year and one day or not, and of whom they were holden, and who had the year, day and waste, and ought to answer the King for the fame, and that he fend the fame before the King,&c.and now in place of these Writs, there ought to be a Commisfion granted to enquire thereof, directed to certain persons by the Statute aforesaid.

And if a man be attainted of Felony, and another entreth K into the Land, and taketh the profits, and if it be found by Commission that such a man who was attainted of Felony, had fuch Lands or Tenements, and that the Lands and Tenements have been in the Kings hand for one year and a day; and that B hath taken the profits for that year and day, and also hath had the waste thereof; and that the Lands are holden of F. Then F shall have a Writ unto the Sheriff, for to deliver him seisure of the Lands, &c. Salvo

jure cujuflibet, o.c.

And he who hath taken the profits for the faid year and day, shall answer the King for the same: and thereby it appeareth that the King shall not have but the next year and day, which cometh after the attainder, and that he who took the profits for that year, shall answer the King for the

And if Lands be holden of an Abbot, and the Tenant die L without Heir,&c.the Successor shall have a Writ of Escheat, and the Writ shall suppose. Ad ipsum nunc Abbatem reverti debet tanquam Escheata sua,eo quod præd', &c. obiit fine hæred.

Oc. ut die. Et nifi, zoc.

And the Tenant for life of the Seignory shall have a writ M. of Escheat, or Tenant in Dowry, or by the Courtesie, and also the Lord shall have a Writ of Escheat of the Mesnalty, which is but a Rent-service, and shall demand the Rent by the Writ.

And the King shall have a Writ of Escheat of Tenements within

within Cities and Boroughs, which are holden of him in 21 H.7.30. But by the Fee-farm.

And if a man have title to have a Writ of Escheat, if he Count, he shall suppose do not accept Homage of the Tenant, he shall not after the land was wards have the writ against him, because he bath accepted holden, him his Tenant : and so if he accept Fealty of him. But if 11 H.4.82. he do accept the Rent of the Tenant, that shall not bar him of his Writ of Escheat; and the Process are Summons, Grand [145] Cape and Petit Cape as in other Pracipe quod reddat.

## Writ of Covenant.

7 Rits of Covenants are of divers Natures: for some are meer personal; and some Covenants are real to have a real thing, as Lands and Tenements: as a Covenant to levy a fine of Land is a real Covenant. But a Writ of Covenant which is meer personal is, where a man by deed doth Covenant with another to build him a House, &c. or to serve him, or to enseoff him,&c. and he doth not the same according to the Covenant, Then he with whom the Covenant was so made, shall have a Writ of Covenant against him. And there is a Note in the Register, which is this: A writ of Covenant ought not to be made according to Law Merch. without a Deed, because no Plea of Covenant can be without Deed, and every man ought to be judged according to his Deed, and not by another Law: and the form of the Writ is fuch: Rex Vic. &c. Prac. A quod, &c. teneat B convent. &c. de damn. & perdit. per infidelitatem & defectum W fil. R apprenticii pred. B, infra termin. fex annorum illat. eidem B

And if a man make a Covenant by Deed to another and his Heirs, to enfeoff him and his Heirs of the Mannor of 16 Eliz. Dy. D, &c. Now if he will not do it, and he to whom the 217. St. An-Covenant is made, dieth, his Heir shall have a Writ of Co. thony Cooks venant upon that Deed; and also his Assign shall have a Case. Writ of Covenant where the Covenant is made to him and

his Affigns.

restituend. Et nifi, &c.

And so Executors shall have a Writ of Covenant, of a Covenant made unto their Testators for a personal thing, and these Writs appear in the Register.

And it appeareth by the Register he may sue a plaint of Covenant, in the County or in the Hundred Court,&c.

And that he shall have a Recordare to the Sheriff for to remove the same out of the County in the Common Pleas, as it shall be done in a Replevin sued there.

And if the plaint of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an Accedas ad Curia directed unto the Sheriff to remove the plaint into the Common Pleas.

And the Writ of Covenant for Executors is such: Prac. F I quod, &c. A,B & C executoribus testament. N conventionem fact. inter ipsum N & W de E, de ipso W cum prad' N more apprenticii per septem. moratur. & eidem N post termin. illum complet. per tantum tempus quantum idem W infra dict. termin. è à servitio ejuschem N elongaverit servitur. ad quam quidem conventionem adimplend. & manutenend. idem W script. suo se obliz. Et nis, &c. Et prad' execut. &c.

And if a man make such Covenant by word. Or to G build him a House, &c. and he doth do it ill; then the perparty shall have an Action upon the Case for the ill doing

of it.

If a man Covenant by word to do such a thing for a certain sum of mony, and receive the parcel of the mony, and day is appointed for the payment of the rest. Now if he do it not according to his Covenant, he shall have an action on the Case against him for not doing of it, because it is a bargain betwixt them.

VC.48 E.3.2. And a Writ of Covenant lieth against Executors for a H
10 H.7.18. Covenant broken of the Testator, and the Writ shall be:
32 H.6.31. Pracip. I & R executor, testament. E., quod, &c. teneant W &
A uxori ejus conventionem saltam inter ipsum A, & pras. E. de

eo quod idem E hared vel executores sui reddant C fil. & hared. I, cum idem C ad plenam ætatem pervenerit, rationabil.compot.summ de omnib.terr. & tenement. quæ præd. I tenuit in villa de
N in com. N pervenient. quorum custod. idem E habuit ex dimissió.
quam præf. A, cui custod. terrar. & hæred. præd. pertinuit eo qd.
prædiet. I, terram suam tenuit in socagio, & eadem A appropinquior suit hared. ipsius I inde secit eidem E, &c. Et nise,

And if a man have Lands for a term of years, and cove-

nanteth to leave them in as good a plight as he found them, although that he pulleth down the Houses, the Lessor shall not have an Assion of Covenant before the end of the terms for the Covenant hath relation thereunto,&c. But if he do waste in Wood,Covenant lieth: for he cannot repair it,E.1

If a man make a Leafe by deed poll, if the Leffor put out K
the Leffee, he shall have a Writ of Covenant upon the deed
poll. But if a firanger who hath no Bight, put out the Lef26 H-8 3.4c. fee, he shall not have a Writ of Covenant against the Lefforbecause

of hypages in the cases supr p 207 to

> 12 E.3.Covenant 2. 40 E.3.5.

because he hath remedy by Action against the stranger. But if the stranger enter by Eisne title upon the Leslee, then he shall have an action of Covenant against the Lessor, because he hath noother remedy.

And in a Writ of Covenant brought by the Leffee against the Lessor, if the term be not expired, he shall recover the term again, if he have put him out. But if a stranger put him 38 E. 3.24. out by Eisne title, then he shall recover all in damages Skipsuh and against the Lessor. And the second Lessee shall have a Writ shall recover of Covenant against the Lessor, if the Lease be made to him damages and his Affignees with warranty.

And if a man leafe Lands for life by deed, and afterwards 24 E.3.24. putteth him out, the Lessee shall not have a Writ of Cove he shall recomant against him, but an Assize But if he grant by the ver his deed, That if a stranger enter by Eisne title, that then he 20 E.3 Coshall have a Writ of Covenant thereupon: now upon this venant 3. special matter he shall have a Writ of Covenant, otherwise ve. 9 Eliz. not, Quod Ve. Trin. 26 H.6.

And in London a man shall have a Writ of Covenant with- 27 H.6.C :-

out a deed for the Covenant broken.

And a man shall have a Writ of Covenant against the 17 H.6.10. 40 E. 3.5. Sureties who became Sureties, or gave fecurity that a man should perform such Covenants,&c.

And the Assignee of the Lessee shall maintain a Writ of Funchden. Covenant against the Lessor, although there be not any Af the Covefignee mentioned in the Deed of Covenant. nant go with

Land the Assignee shall have Covenant without being named. As two Coparceners one covenanteth to discharge the party other, the Alience shall have Covenant on F

Allo Administrators shall have a Writ of Covenant as 385 a sha well as Executors.

And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another 26 H.6.Co-County, the Party shall not plead the same to abate the although it Writ, unless the Deed bear date in another County, and so bear date in the title of Covenant in the Abridgments were at large for other Counthat matter.

ty, yet the writ lieth

Dyer 257.

venant 11.

146

where the Land is.

## Covenant to levy a Fine.

There is another manner of Covenant, which is more in F the realty. And that Writ properly lieth where a man by deed granteth to another to levy a Fine to him and his Heirs of certain Lands and Tenements, he to whom the grant is made, shall have a Writ of Covenant against him to levy a fine of that Land, &c. and the form of the Writ is such:

Rex Vic.Sc. Pracip. A, Sc. quod, Sc. teneat B convention, fuam inter eos fact. de manerio de N cum pertin. Vel fic: de uno mesuagio Suna acr. terr. pertin. in N, Sc. & nist, Sc.

And the form of the Particulars in that Writ shall be used as the form is, as in a Pracipe quod reddat of Land, to

put the Particulars in the faid Writ.

And if he who ought to levy the fine, and make the Co-G nusance, cannot come for fickness or other reasonable cause into Court, then he may sue a Writ of Dedimus Potestatem, directed unto some Justice, that he go to him to take the Conusance, and to certific the same to the Justices of the Common Pleas, and the Writ of Covenant ought to be sued before the Dedimus potestatem be retorned in the Common Pleas, and the Dedimus potestatem ought to recite that the Writ of Covenant is depending in the Common Pleas before the Justices; and the Writ shall be such:

Rex dilecto & fideli suo, W. Rikhil falutem. Cum breve nostrum de convention. pendeat coram vobis & sociis vestr. Justic. nostris de banco inter A, & B, & C uxor ejus de una caruca terræ cum pertin. in N, ad finem inde inter eos coram vobis & fociis vestris prædict. de banco præd. secundum legem & consuetudinem regni nostri levand. ac præf.A,B & C adeo impotentes fui existant, quod absque maximo suorum corporum periculo usque ad Westm. ad diem in brevi prædict. contentum ad recognitiones que in hac parte requiruntur faciend. laborare non sufficiunt, ut accepimus, Nos statui eorund. A, B & C compatientes in hac parte, dedimus vobis potestatem recipiend. cognitiones quas prad' A, B & C coram vobis facere voluerunt in pramiff. & ideo vobis mandam. quod ad præf. A, B & C personaliter accedent. cognition. suas præd. recipiatis. Et cum eas receperitis præfat. socios vestros inde distincte & aperte reddatis certiores, ut tunc finis ille inter partes predict. de tenementis predict. coram vobis & fociis vestris predict. in eodem banco levari possit, secundum legem & consuetudinem predict. & habeas ibi tunc hoc breve. Tefte, &c.

46 E.3.4. 47 E.3.3. And if the Dedimus Potestatem be made unto any the Justices of the Kings Bench, then the form of the Writ is such:

Rex dilett. &c. W capital. Justic. nostro, vel sic: Justic. nostro, &c. Cum custos domus vicaria Ecclesa beati Petri Ebor. tulerit breve nostr. de convent. versus H, militem de advocatione Eccles. de F, ad sinem inde inter eos coram Justic. nostris de banco secund. legem & consuetud. regni nostri levand. ac idé custos & H adeo impotentes, &c. (usque ibi) & cum eas receperitis pref. Justic. nostros inde sub sigillo vestro distincte & aperte reddatis certiores, ut tunc sinis ille, &c. (usque ibi) secundum legem & consuetudinem supradist. mittend. eisdem Justic. boc breve. Teste, &c.

And if a man have divers Writs of Covenant depending against several persons in several Counties, &c. he may have one Writ of Dedimus potestatem directed to one Justice to take their Conusance severally, and to certifie them, &c. and

the form of the Writ is fuch :

Rex, &c. Cum breve nostrum de conventione pendeat coram vobis & sociis vestris Justic. nostris in banco inter E & I, de medietate manerii de N cum pertin. & aliud breve nostrum de conventione pendeat coram vobis & sociis vestris pred. inter ipsum E & pr.s.f. I de uno mesuagio, &c. (& sic de aliis,&c.) ac fines inde inter eos, &c. (ubi supra.)

And if a man ought for to levy a fine, and he is going in the Kings Service, then he shall have a Dedimus Potestam directed unto the Justices, to take his Conusance. And so of a woman who is with Child; and the Writ shall mention the

fame: thus,

Rex, &c. Cum breve, &c. (usque ibi) ad finem, &c. ac prof. W de mandato nostro obsequio nostro alibi intendat, & prof. I prognans sit & gravida, ac prodict. B languidus & impotens su existit, per quod prodict. W apud Westen. ad diem in brevi contentum venire non potest, nec prodict. I & B, ad dict. diem & locum laborare non sussic. ad cognit. &c. Nos eidem W grat. volentes facere specialem in bac parte, & statui corundem L &c.

P compatient. in bac parte.

And if he in the reversion will levy a fine of his reversion unto another upon a Writ of Covenant sued forth against him, the Conusance shall be taken in the Common Pleas, but the fine shall not be engrossed until the Tenant for life hath attorned; and the fine is said engrossed, when the Chirographer maketh Indentures of the sine, and delivereth them to the party to whom the Conusance is made, and then it is said that the fine is engrossed, and after that the Conustrictions.

Cc 4 fee

fee shall not have a Quid jurls clamat against the Tenant for life But the course is, when he in the reversion upon the Writ of Covenant sued against him, maketh the Conusance of the reversion by sine, &c. then upon that the Conusee shall have a Quid juris clamat against the Tenant for life; and if the Tenant for life be so weak that he cannot travel, then he may sue a Dedimus Potestatem directed to the Justices to take his Conusance,&c. and to certifie the same into the Common Pleas.

2 H.s.t.

And the like Writ of Dedimus Potestatem shall be granted, where the Lord by fine granteth the Services of his Tenant unto another upon a Writ of Covenant sued against him. If the Conusee sue a Per quae servitia against the Tenant, then if he be weak, or fick, he may sue a Dedimus potestatem, to take his Conusance, &c. and to certifie the same, &c. But now the course is for to admit the Desendant in a Quid juris clamat, or Per quae servitia, to make attorney after a Plea, that he shallsorseit his Estate, if it be sound against him, &c. then it is clear, That he shall make attorney after the Plea pleaded; and the course is now to make attorney after pleading: and if he be adjudged to attorn, to award a Distring a sad attornandum against him, &c.

4 Mar. Dy.

And if a man hath a Writ of Covenant against one to levy B a fine, and thereupon a Dedimus Potestatem directed to a Judge to take the Conusance of the party, and the Judge doth take the Conusance by force of the Writ, and will not certifie the fame in the Common Pleas, then the party may fue a Certiorari directed to the same Judge, reciting all the matter how he hath taken the Conusance, commanding him by the Writ to certifie the fame into the Common Pleas: and upon that an Alias, and Pluvies, and Attachment to the Judge, if he will not certifie it or retorn it, or shew cause why he do not certifie it. And if the Judge be dead who took the Conglance, he may have a certiorari to his Executors, and an Alias, and Pluvies, and Attachment, vel caufam nobu fignifices; and in the end of the Writ shall be this clause: Et habeatis ibi hoc breve, per quod cognitiones prædict recepiftis. & hoc breve. Mandamus enim Justic. nostris de banco prædict. quod cognition. & brevia predict. sub sigillo nostro eis misstis, quod ea à vabis recipiant. Tefte, &c. And by that it appeareth, That although the Certiorari be fent to the Judge to retorn the Conusance taken before the Justices of the Common Pleas, that yet he ought to fue forth another writ to be fent and directed unto the Justices of the Common Pleas, to

receive such Conusance taken: and the Writ of Certiorari which shall be directed unto the Justices of the Common Pleas to receive the Conusance, are in the Register amongst the Writs of Covenants.

And if a man will levy a fine of lands holden of the King in chief, then he ought to have a special Writ unto the Ju-

flices of the Common Pleas; thus,

Rex Juftic. suis de banco salutem. Cum per literas noftras patentes de gratia nostra speciali concessimus L quod ipse de maneriis suis de N & I, cum pertin-que de nobis tenentur in capite feoffare poffit W, &c. recitand. totam chartam (ufque ibi) prout in literis nostris predict. plenius contineatur, ac breve nostrum de conventione pendeat coram vobis in banco predict.inter prad I & W de maneriis prædiet. ad finem inde inter eos secundum legem & consuetudinem regni nostri levand. ut accepimus, Vobis mandamus, ad. finem illum inter partes prad. coram vobis in eodem banco levari permittatis juxta tenorem literarum nostrarum prædi&. oc.

And if it do appear unto the Court, that the Lands are holden of the King in capite, the Court ex officio ought not to fuffer such fine to be levied without such a Writ directed

unto them, declaring the Kings pleasure.

And there is another Writ of Certiorari directed unto the Treasurer and Chamberlains of the Exchequer, to certifie the transcript of a fine in the Chancery; and a Writ of Mittimus out of the Chancery directed to the Justices of the Common Pleas to transcribe the said fine,&c.

And another form of Writ of Certiorari directed unto the Chirographer, to certifie into the Chancery tenorem cuiusdam nota in Cur. Domini E nuper Regis Anglia, Oc. as appeareth

in the Register.

## Writ of Dower unde Nihil habet.

29 Aff. 68. A Writ of Dower, unde Nibil babet, lieth in case where a 2r.Dem. 63.
woman taketh her husband who is sole seised of Lands Dower lieth or Tenements to him and his heirs in Fee-simple or unto Guardian in him and the heirs of his body, &c. Or if the Husband during Socage, and the Marriage betwixt him and his wife, be folely feifed in therefore it Fee-fimple, or in Fee-tail of such estate, that the issue be- is doubted gotten betwixt him and his wife may inherit the same, Then if such a if the husband doth alien the same, or dieth seised there- Guardian of or be thereof diffeifed, and dieth, his VVife shall have hower if a VVrit of Dower, unde Nihil habet, against him who is there be a Tenant of the Freehold of the Land, or against him who is differing.

Se y Stat of boyt 2 /2 D: Phis really 4 bridgen

Til . Jangr:

Gardian in Knights service of the Land; and the form of the Writis:

Rex Vic. &c. Præc. A quod juste, &c. redd. B, quæ suit uxor C rationabilem dotem suam, quæ ei contingit de tenemento quod suit prædist. C quondam viri sui in N, unde nihil babet ut dicit. Et unde queritur, quod præd. A ei desorc. & nis. &c.

And against the Gardian the Writ is such: Pracipe A Custod. terra & haredis I, quod reddat, &c. B, que fuit uxor

C.&c.

Otherwise where the wise is endowed ad ostium Ecclesie, Thus: Prec. A quod redd. C, B que suit uxor C centum acr. terræ cum pertine in N, de quibus prædist. C quondam vir ipsus B eam dotavit ad ostium Eccles. quando eam desponsavit, unde nibil habet, &c.

And if she be endowed de assensu Patris, then thus: Pree. A quod, &c. redd. B que suit uxor C centum acr. terre, &c. de quibus predict. C silius & beres ipsus A, quondam vir ipsus B de assensu & voluntate ipsus A, patris sui eam dotavit

ad oftium Eccles. Oc. unde, oc.

And the Writ of Dower unde nihil habet, may be fued in

68 Common the County before the Sheriff by a Justicies.

And if a wife shall be endowed of Advowsons, Villains; Commons of Pasture, and of other profit, or liberties, of which her husband had any estate of Inheritance; which estate the issue betwixt them by possibility may inherit, &c.

And the wife may fue a Writ of Dower of Lands or Tenements in London, and the Writ shall be directed unto the Mayor and Sheriffs of London, and the Writ shall be such:

Rex Majori & Vic. Lond. salutem. Precip. vobis quod justicietis A quod juste & sine dilatione, & secundum consuetud. Civitatis nostr. London. redd. E, quæ suit uxor C rationabile dotem suam, quæ ei contingit, &c. in Lond. justic. D, quod juste, &c. & secundum consuetudinem, &c. reddat eidem B rationabil. dotem suam, &c. in eadem Civitate, unde nihil babet, &c. ut dicit, & unde querit. quod pred. A & D ei desorceant, rationabiliter monstrare poterit, quod ei reddere debeant, ne amplius, &c. Teste, &c.

And by that it appeareth, That a Woman shall have a Writ of Dower in London against several Tenants by a several Justicies in the Writ, as well as she shall have a Writ of Dower against several Tenants by several Pracipes, and all in one Writ. And the Process is Summons, Grand Cape and

Petit Cape in the Common Pleas.

writ

2) 11-9m on Parkins 67, 2) 11-9m of sex common fins numbr. & eftovers. Old Na. Br.

5.2 E.3.

Dower 23.

# . Writ of Admeasurement of Dower.

The writ of Admeasurement of Dower lieth, where the heir when he is within age endoweth the Wife of more than she ought to have Dower of: Or if the Guardian endow the wife of more than of the third part of the land of which she ought to have Dower, Then the heir at his sull age may sue this Writ against the wife, and thereby she shall be admeasured; and the surplusage which she had in Dower shall be restored to the Heir, but in such case there shall not be affigned anew any land to hold in Dower, but to take from her so much of the land which amounteth above the third part of all the land of which she ought to be endowed.

And if the heir within age before the Guardian enter into the land, do assign to the wise more land in Dower than she ought to have, then the Guardian shall have the Writ of Admeassurement against the wise by the Statute of west. 2. cap. 7. And if the Guardian bring the Writ and do pursue it against the wise; yet the heir at his sull age by the same Statute shall have the writ of Admeasurement of Dower a-

gainst the Wife.

And the Writ is Vicontiel, and shall be sued in the County

before the Sheriff, and the Writis fuch:

G Rex Vic', &c. Questus est nobis A filius & hares B quod C, qua fuit uxor predict. B, plus habet in dotem ne liber. tenem. quod fuit pradict. B quondam viri sui in N quam habere debet, & ad ipsam pertinet habend. Et ideo tibi pracipimus, quod juste & sine dilatione Admensurari fac. dotem illam, ita quod prad' C non habeat plus in dotem de hered. predict. A, quam habere debet & ad ipsam pertinet habend. secund. rationabilem dotem suam. Et predict. A habeat de dote illa, id quod habere debet, & ad ipsam pertinet habend, ne amplius, &c. Teste, &c.

And for the Guardian the Writ is such: Questus est nobis A custos terr. & hered. C, quad C que fuit uxor predict. E plus habet in dotem ipsus, &c. (usque ibi) ita quad præd. C non habeat plus in dotem de hered. predict. heredis quam habere debet. &c. Et quad predict. custos habeat de dote illa, &c. ne am.

plius, &c. Teste, &c.

And when the plea is in the County, the plaintiff may remove it without cause; and the Desendant may remove it with cause in the Writ, as in a Replevin. And if the Writ be removed in the Common Pleas by a Pone, and process be awarded against the Desendant according to the Statute, which

which is Summons, Attachment, and Diftress,&c. Then the Sheriff cannot make the Admeasurement, but to extend all the land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices.

And if the Guardian affign for Dower, &c. more than she I ought to have, and afterwards grant over his estate, his

ailignee shall not have a Writ of Admeasurement.

And foif the Heir within age affign unto the Wife more in Dower than she ought to have, &c. The Guardian in Right may have a Writ of Admeasurement, but if he grant over his estate, his affignee who is Guardian in Fair shall not have the Writ, because it was a thing in action given to his Lesior, &c. and the Heir shall have a Writ of Admeasurement of Dower, for Dower affigned in the time of his An, ceftor.

Perk. 19.d. 7 H.2. Admeafurement 4.

12 H.6. Admeafurement 9.

7 E.z. Ad-

measure-

ment 13.

And if a woman be endowed in Chancery by the King, A &c. the heir shall have a Writ of Admeasurement against her if the have more affigned to her for her Dower than the ought for to have.

And if the Guardian do affign Dower more than she B ought to have, the heir during his non-age shall not have a Writ of Admeasurement, but if he himself assign more for Dower than she ought to have, &c. then it feems reasonable, that he himself during his non-age have the Writ of Ad-

measurement of Dower. But if the wife after the affignment of Dower do improve C the Land, and make it better than it was at the time of the affignment; an Admeasurement doth not lie of that improvement. But if the improvement be by casualty of a Mine of Coals or of Lead, which are in the Land, &c. which have been occupied in the Husbands time, the doubt is the more, but she cannot dig new Mines; for that shall be waste

if the fo do.

11/ my + +31:

And if the Auncestor dieth seised, and the Husband die D before he entreth into the Land, yet the Wife shall be endowed, although her Husband had but a possession in Law.

Perkins \$9. 3 H.7.5. 21 E.3 21.

But a man shall not be Tenant by the Courtesie of the Wives Land, if his wife had not a possession in deed, if it be not in special Cases; as of Advowson or Rent, where she dieth before the day of payment of the Rent.

And in that case if the Kings Tenant die seised, and the Heir die before he enter; then the VVife shall be endowed.

But

But if the Heir enter and intrude upon the Kings possef- 1 H.7.17. fion, and afterwards die before he fueth his Livery; The 4H.7.1. Wife shall not be endowed by the Statute of Prerogativa Regis, cap. 12. which is, that if the heir intrude upon the Kings possession, that Nullum accrescit ei liberum tenementum, Orc.

Where a woman taketh a Lease for years of Land; she 2 H.4.7 Pershall not be endowed of the same land during the Term.

And where the estate which the Husband hath during the marriage is ended, there the wife shall lose her Dower. taketh a Wife and diffeifeth the Discontinuee, or the Dis-11-924 \$31: continuee doth enseoff him, and afterwards have tail dieth seised, his heir is remitted, and the wife shall lose her Dower, because the heir is in of another estate of Inheritance, than the Hushand had during the Coverture.

And so if a man have title of Action to recover any land, uli Jup. and afterwards he entreth and diffeifeth the Tenant of the Land, and dieth feifed, and his heir entreth, The heir is remitted unto the title which his Auncestor had, and the Husbands wife shall lose her Dower; for that estate which the Husband had is determined, for that was an estate in Fee by wrong, and the heir hath the estate in Fee which his

Auncestor had by Right.

If a man make a gift in tail, referving Remtto him and 10 E. 3. his heirs, and afterwards the Donor hath a wife, and the Avowry Tenant in tail dieth without iffue, The wife of the Donor 159. fhall not be endowed of the Rent, because the Rent is ex-Perk. 63.d. tinct, for it was referved upon the state tail which is ended: But although that the Tenant in tail dieth without issue; 46 E.3.24. yet his Wife shall be endowed, because the Land continueth Finchden. and is not determined as the rent is.

If the Grandfather dieth seised, and after the Father Perkins 62. dieth feised, and the Son hath the Land, and then the wife 45 E.3.13. of the Grandfather is endowed of the third part of the land and dieth, yet the wife of the Father shall not have Dower of that third part, because dos ex dote peti non debet.

And if the Husband be Tenant in Common with two GHaha other in fee of certain lands, and dieth, his wife shall be en- ita ful the shan dowed of the third part of that land, only with metes and & golow & Gymelt bounds to hold in Common, &c.

And if a wife be endowed of a Mill, or of an Office, the 45 E.3. 111 shall have the third part of the profits thereof affigned Dower so. unto her, and she shall have a Freehold in the third part of kins 67.2. the Mill,&c. M.45 E.3.

A Woman of the age of 9 years or more at the death of I. Lin. 8.12 H. 4. I.Dr.& her Husband shall have Dower of his land. And if she be Stud. 13. of less age at the death of her Husband, then she shall not have Dower.

If a woman be endowed, and afterwards loseth by action M tried, if the pray in aid of him in the revertion, the shall be

new endowed of that which remaineth.

If the hufband exchange land. &c. and afterwards dieth, N if the wife have Dower of the third part of the land taken in Exchange, the thall not have Dower of the other Land,

&c. which was given in Exchange.

If a woman be Guardian in Socage, and she bring a Writ of Dower against a stranger, he may plead, that she holdeth other lands in Socage of which she may endow her felf, de le pluis beale, and then the wife upon that may endow her felf of those lands unto the value of the third part which the ought to have of the other lands which the Guardian holdeth,&c. And whether she may endow her self of the hath a Free- pluis beale unto the value of the third part which she ought to have of all her Husbands land or no, Quare; for some hold, That Dower de pluis beale, shall endure but during the mi-nority of the heir who is in Ward. Life Sct Ag cont:

Candifh.ac. to this here.

Titt. 10. d.

45 E.3. 6.

Perk. 68.2.

Dower 161.

13 E.19.

That he

hold.

The Son would have endowed his wife of a Reversion of A · land which one held for life, ex affensu patris; and it was holden that it was not good, M.4. E.3. because it was not in possession; whereof a Right of Dower may be claimed.

22 E. 3. And the Writ of Dower ex affensu patris lieth as well E Dower 131. against the Guardian, as against the Tenant of the Free. Perk.64.2. hold.

flow If the Tenant forejudge the Mesn, yet the wife of the Mesn C shall be endowed.

If a man recover in value against the Husband by a war- D Dower 129, ranty Auncestrel; yet the wife shall be endowed, because the fame is by force of the warranty made, and not by reason of Eigne Title to the land.

> The younger Son shall not assign Dower to his wife ex 7 affensu patris of the Fathers land, because he is not heir

apparent.

If the husband enter into Religion, the wife shall not F have Dower during his life.

The wife shall have the third part of the Advowson for G her Dower.

Anst + 92: If the wife do elope from her hufband, and remain with H 43 E.z. 19. the Adulterer she shall lose her Dower; But if she remain Perkins 70. in Adultery upon the husbands Lands or Tenements, she fhall

Writ of Admeasurement of Dower.

shall have Dower, because the same is not an Elopement.

If the husband be attainted of Felony by Outlawry or Conditional otherwise, she shall lose her Dower.

431:

feised.

L Endowment ex affensumatris is good; but ex affensu fratris, Il Jul: +35: it's holden it is not good.

And Dowment ex assensu patris after the Marriage is 3 H.6.4. Leste to

M If a man marry a woman, in a Chamber, Dowment ad offine life maketh a Feofiment Camere is not good. 111911 + 34.

N

E

D

E

F

Dowment ad Officer Ecclesia of the moiety of the Land, Wife shall is good. /// milf f 34 of have Dow

And a woman married in a Chamber shall not have Dow-against the er by the Common Law, H. 16 H. 3. Quere of marriages Feostee, but made in Chappels not consecrated, &c. for many are by the Lessor. Licence of the Bishop married in Chappels, &c. And it seemeth reasonable. That in such cases the shall have Dower.

feemeth reasonable, That in such cases the shall have Dower.

And in some places the wife shall have the Moiety in Dower; as in Gayelkind.

And in some Cities she shall have all by the Custome which is called Free-bench, &c. And Glanvil saith, That ad ostium Ecclesia, a man cannot assign more than the third part in Dower, and if he do the wife shall be admeasured, &c. but less may be assigned by Law; yet at this day it seemeth, That the assignment ad ostium Ecclesia of more than the third part is good, and she shall not be admeasured for it.

And the wife shall not be distrained in the lands which she holdeth in Dower, for the debts of the Husband in his life due to the King, nor in the lands of inheritance of the wife, nor in the lands which she hath by purchase made by the husband to him and his wife, and unto their heirs; And if she be distrained by the Sheriff, she may sue forth such

Rex Vic. &c. Cum secund. legem & consu. Regninostri Angl.
mulieres in tervis & tenement. que tenent in dotem de dono viror. sur que que sunt de bereditate sur, vel q. sibiperquiser,
pro debitis virorum suorum reddend. distringi non debeant, ac
tu B que suit uxor A distringis in tervis & tenement. suis, que
tenentur in dotem de dono predict. A, & etiam quam suer. de
bæred. ipsius B, sicut ex querela sua accepimus: Tibi præcipimus,
quod ipsium B in terr. & tenemen. suis quæ tenentur in dotem, vel
sunt de bæreditate sua propria, vel ex que sito ipsius B pro debito

3 H.6.4. Leffee for life maketh a Feoffment in Fee, his Wife shall have Dower against the ipsius A quondam viri suiredd. non distringi fac. contra legem & consuetudinem prædiet. & districtionem si quam, &c. ei rede-

liberari fac. &c. Tefte, &c.

There is another form of Writ in the Register for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not distrain the wife in those lands which she holdeth in Dower, or of her own Inheritance for the Husbands debt; but that Writ hath these words in the end of the Writ. Dum tamen hæredes & executores testamenti ipfius A ad debita illa nobis reddend. Sufficiunt non diftr. &c. And by these words in the Writit seemeth that if the heir of the Executors have not sufficient of Lands or Goods to pay the debt, that the wife shall be charged and distrained for the debt of the Husband, in those lands. But it seemeth reasonable that the wife shall not be charged or distrained for the joynt purchase made to her husband and her, nor for her lands of Inheritance, nor in the lands wherein she hath title of Dower before the husband become indebted to the King. And that the first Writ is according to the Law for those cases. But if the husband be indebted unto the King before she have title of Dower, it seemeth to be otherwise.

And there is another Writ in the Register for the wise directed to the Sheriff, that he do not distrain her in lands or Tenements which her husband and she purchased joyntly before the husband was indebted to the King, if they purchase the land joyntly to them in Fee, the lands after the death of the husband in the hands of the wise and her heirs shall be discharged of the debt, and if he be distrained that

he deliver them again to the wife.

And by the same reason, although the husband be before indebted to the King, that if he and she purchase the Land joyntly in Fee to them, after the death of the husband, the wise and her heirs be discharged of that debt. And there is another Writ in the Register, for the Tenant in Dower, directed to the Sherist, that he do not distrain the wise for the husbands debt, because that the heir who ought to pay the same out of the lands is within age, and in ward to the King. Or because that other Tenants who should be charged with the payment thereof, are omitted.

And so it seemeth the lands of the Tenant in Dower shall be discharged if there were other lands of the husband to pay the debt. And those Writs appear in the Register.

fol. 142,143.

distreyn the wise who holdeth Lands in Dower for the Ve.50 Ass. Assertion distreyn the wise who holdeth Lands in Dower for the Ve.50 Assertion debts of the husband which he owed to the King before the 5.Br. Charge contract of marriage between him and the wise, nor the 34 the hus-Lands which the husband and wise purchased joyntly in Fee band & wise for the husbands debts which he became debtor for, before the purchase. And she may have such Writ out of the Chanches a leafe cery directed unto the Treasurer and Barons of the Exchefor years, quer, commanding them that they enquire thereof, and if the husband they find the same, that they surcease and discharge the wise with this Provision the Writ: Proviso, qued debitailla leafe execut. In her, prad. A ac tenentibus terrarum quod sua the Kings jussum est, Tesse & c.

### Writ de Consuetudinibus & servicius.

B THE Writ of Customs and Services is in its nature a Writ of Right, and lyeth sometimes for the Lord who hath a Fee in the Seignory, and sometimes for the Tenant in tail of the Seignory, or for Tenant in Dower, or Tenant for life, or for him who hath a less estate than a Fee, and the Writ is close and not Patent, and shall be directed unto the Sheriff and shall be returnable sometimes into the Common Pleas at the pleasure of him who sueth the Writ. And that Writ may be sued in the County before the Sheriff by a Justicies.

And the Writ lyeth where the Tenant doth' deforce the Lord of the services which he ought to do, or of the Rent which he ought to have, as well as of service. And the form of the Writ which is returnable in the Common Pleas is:

D Rex Vic.&c. Prac. A. quod &c. faciat B. consuetud. & servic. quod ei facer. debet de libero tenemento suo, quod de eo tenet in G. ut in redditibus, arreragiis, & alius, Vel sic, In Homag. releviis, & al. Vel sic. In sectis cur. & aliis, & nist, &c.

And if the party were not feifed of the Services and Tenements which he claimeth, but his Ancestor, then he shall not say in the Writ, ut in arreragiis, &c. but omission shall be made in the Writ of the services.

E And if the Writ be fued in the County before the Sheriff, then the Writ is fuch:

Rex Vic. &c. Justicies A. quod, &c. sac. B. cons. & rect. servic. &c. ut supra, sicut rationabiliter monstrar. poterit, quod &c. ne amplius, &c.

F And a man may fue feveral Tenants by one Writ of Customs and Services by several Practipes in the Common

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Pleas, or by one Writ and diverse Justicies, in the Writ which shall be directed unto the Sherist to hold pleaupon them. But if the Writ of Customs and services be sued against several Tenants by several Pracipes in the Writ, and returned into the Common Pleas, then all the Pracipes shall be put together thus. Pracipe A. quod fac. B. &c. Et prac. C. quod &c. fac. D. &c. Et prac F. quod, &c. fac. G. &c. And in the last Pracipe shall be put this clause, in redditibus & aliis, and this word arrevagis shall be left out.

2 E.2.Fits Droit 28° And when the Writ is in the Right only, then he shall count G of the seisin of his Ancestor, and the Writ only in the Debet; But when he counts of his own seisin, then the Writ is in the debet & solet, &c.

N.B. 38. the Disclaimer ought to be in a Court of feud and not in the County.

And disclaimer lyeth for the Tenant in this Writ against H

And note that if he say in the Writ, ut in redditibus & I arreragius, that those words prove that the demandant himself was seised of the services, and then if he count in such Writ of the seisin of his Ancestors, and not of his ownseisin, the Writ shall abate, quod ve. et E. 1. title Droit.

But if he will bring a Writ of Customs and services of the K seisin of his Ancestors, he ought to leave out those words out of the Writ, ut in redditibus & arreragiis, &c.

And a writ of Customs and Services doth not lye against Tenant in Frank-marriage, until the fourth degree be past, &c. if not, that he hath done Homage to the Lord, &c. for by so doing he is concluded, &c.

And if a man will bring a Writ of Customs and services L against any Tenant, and by his Count demand Homage, then the Writ ought to make special mention thereof, or as to say

ut in Homagio, &c. otherwise the Writ shall abate.

And if a man holdeth divers Mannors infeveral Counties M by one Service, &c. if the Lord be deforced or kept from his fervices, he shall have several Writs of Customs and services for each County one Writ, and shall have them returned at one day in the Common Pleas, and then he shall count upon them, as his case is, which see in the title of Droit. 30 E. 1.

And note that this writ is a Pracipe quod faciat, &c. and N where he demandeth Land, then the Writ is Pracipe quod reddat, &c. and in this Writ the mile shall be joyned, if the Writ be brought by Tenant in Fee of the Tenancy by him who hatha Fee in the Seignory. But if the writ be brought by Tenant in Dower; or Tenant in Tail, against the Tenant in Fee-simple, it is a question how the mise shall be joyned. But I think the mise shall be joyned in that

cale,

case, and the weakness of the estate on the part of the demandant shall not out the Tenant of the Plea, which the Law giveth him to joyn the mile, but if the Writ be brought against Tenant for life, where the remainder is over in Fee, there the Tenant may pray in aid of him in the remainder, and then they may joyn the mife with the demandant, &c. But where the demandant, who hath the particular effate, bringeth the Action, although he pray in aid of him in the reversion to joyn the mile, it is hard to be done, &c: But it seemeth reafonable, that the same law which enableth him to bring the action, the same law ought to enable him for to joyn the mile upon the plea of the Tenant.

#### Writof Annuity.

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Writ of Annuity lyeth in case; Where a man granteth of this with unto another a yearly Rent for life, or for years, or in & Trollyng. Fee out of his Lands, or out of his Coffers, or to receive from \$ 144:145 his person yearly at a certain day. Now the grantee may 140:150. fue a Writ of Annuity for the same, &c. if he be behind at 349: 204. the day of payment, &c. And if it be granted out of the Land 7 with a clause of diffres, then he may choose either to diffreying for the same, and make it a Rent charge, or he may bring a fech Writ of Annuity for the same. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff de- p That de clare thereupon, then he cannot distrain for it after. And in for mine hy like manner, if he do distrain for it and avow, then he shall not glackion ed fue a Writ of Annuity for the same rent. But if a man grant a 1/1-4n/+144: yearly rent for life, for years or in Fee, and doth not express 145: in the grant that it shall be taken out of any Lands or Tenements, nor any diffress granted for non-payment thereof, then it is meerly taken for an Annuity; and he shall not have any other remedy for the same, but a Writ of Annuity.

And this Writ may be fued before the Sheriff in the County by Justicies as well as in the Common Pleas, and the form of the Writ in the County is such.

Rex Vic. &c. Prec. tibi, quod justicies A. quod juste &c. tiff in Anredd. B. centum marcas, decem quarteria frumenti, & xx. robas, nuity had quod ei a retro sunt de Annuo redditu C. s. duorum quart. fru- Judgement menti, & unius robæ, quæ ei debet, ut dicit, sicut rationabiliter damages, monstrare poterit, quod ei redder. debeat, ne amplius, &c.

The Plainand thereupon.

brought a Sc. Facias B. R. to execute Judgment, and good. 14 E. 3. Fitz Meine

And the form of the Writin the Common Pleas is: 34 H .6.20.

3 H, 6. An-Rex Vic. &c. Pracipe A. quod jufte, &c. redd. B. cent. marc. nuity. 2. 16. & medietatem trium pannorum, cum pellura, & duorum panno-E.3. Annuity rum cum sindone, quod ei a retro sunt de annuo redditu decem 22. If a man marcar. & medietatis unius panni cum furrura, & unius panni bring Ancum findene, quod ei debet, &c. et nifi, &c. muity and

the fame ex-

tinguish or determine pendant the Writ, the Plaintiff cannot have Judgment in that Writ, but is put to his Action of Debt. Fint Inf 1200:

> And note, that in that Writ the form is, Quem ei deat C where he demandeth other thing than money. And yet in a writ of Debt, the form is, that he fay in the Writ, Quas ei debet, if not that he demand money, for if he demand Robes or Corn, or such like Chattels; the Writ shall be, Que vel quas ei detinet, and not debet, &c.

And in Debt if a mandemand Money, and also ten Quar-

ters of Wheat, then the form of the Writ is:

Præc. A. quod juste, &c. redd. B. decem libras, &c. quas ei debet, ac dec. quarteria frumenti que ei injuste detinet, &c.

And if a man have an Annuity of 20 l. to receive of A. D and he grant 10 l. of the same to another man to receive of A. A. shall not be charged by that grant, but the grantor only by writ of Annuity : But if he had granted 10%. parcel of the faid Aunuity, it feemeth then that the grantee ought to charge him who ought to pay the 20 1. by a writ of

Annuity.

And the writ of Annuity ought to be brought in the Coun- E. ty where the grant was made; But an Annuity to receive from a man of Religion, or a body Corporate, or from a Church, ought to be brought where the Church or house is,

or where the feifin is alledged.

49 E.3.5. ac 15 E.4:

X And the heir shall be charged by a writ of Annuity upon F the grant of the Father if he have Assets by descent. But an Annuity shall not be maintainable against the heir by prefcription, because it cannot be known whether he hath by descent from the same Ancestor, &c. by whom the Annuity was first granted.

And the writ of Annuity shall be maintainable against a G Parson upon a grant made by his predecessor, with the assent of the Patron and Ordinary; and fo upon an Ordinance made by the Ordinary without the Patron, if he have Quid pro quo.

And Annuity granted by the Bishop with the confirmation of the Dean and Chapter, shall bind the Successor of the Bishop.

But in case of not charge this with lies not gift g heir without name ing him altho he has Assets: First gryt + 149: 6.

not:

9 H.6.12: and 13,

First Im

Ve.14. H. 4. 1ct 6401:

And if a man grant unto another 40 s. or a Robe yearly at Tint 9m fuch a day, &c. after the day he may demand the one or the other at his Election. Jection Contra

And an Annuity shall be maintainable by a Parson against 16 E.3. Ana Vicar, upon an Ordinance of the Ordinary, if he have quid nuity. 34. 20 E.3. An-

Upon debate of an advowson between a Prebend and a nuity. 32. Prior, the Ordinary made a Composition and Ordinance, that the Prebend should have an Annuity of 20 s. and the Prior the advowson for ever, and that did charge the Prior in a writ of Annuity and his Successors. T. 9. R. 2.

And in the time of vacation the Patron and Ordinary may 1 Ma. Dyer. by their grant charge the Church for ever, as appeareth in 92.

the same year. And if the King grant one an Annuity for life or years he ought to express in the grant by whose hands he shall receive the Annuity, as to fay Per manus Vic. de S. vel ball. nostror. de manerio nostro de S. and then the Bayliff or Sheriff Ita man shall have allowance upon his Patent shewed, if he hath paid grant 10 s. the same, and if he have not such words in the grant of An-parcel of nuity, the grant is void, for he cannot fue the King for it, Annuity of

and no person is bounden to pay the same unto him, if he 20s. and in A be not expressed and named in the Patent, &c. And the truth there Processina Writ of Annuity is Summons, attachment, and Annuity, the distress. And for default of distress, &c. process of Outlawry, grant is by the new Statute made, Ann. 23. H. 8. cap, 14.

void. But if

it be granted to receive our of fuch a Sum, and there is no fuch Sum, yet the fame is good to charge the person of the grantor. Ve. Annuity 5, to receive in 10 l. or de 10 l. no difference.

### Writ de procedendo ad Judicium.

HE Writ to proceed unto Judgment lyeth where Judges of any Court delay the party, Plaintiff or Defendant, that they will not give Judgment for him when they ought so to do, &c. then the party grieved, shall have this Writ directed unto the Judges, & the form of the Writ is fuch:

Rex Majori & Vic. Lond. Jal. Quia redd. judicii loquelæ quæ est coram vobis in Hustingo nostro Lond. sine brevi nostro inter A. & B. de quadam transgreff. eidem A. per præf. B. illat. ut dicitur, diutinam cepit dilation. ad grave damnum ipfius A. ficut ex querela sua accepimus, vobis pracipimus, quod ad judicium inde redd. cum ea celeritate, qua secundum legem & consuctud. civitat.præd.fieri poterit proce lat. Teste, &c.

Dd 3

And

Writ de procedendo ad Judicium.

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And upon that Writ he shall have an Alias, and a Pluries C directed unto them, if they will not proceed, and afterwards an Attachment upon that directed to the Coroners, &c. returnable into the Kings Bench or Common Pleas, and it appeareth by the Writ that it lyeth as well against Judges of Record as other Justices.

Ma. Dyer. 10. the opin. cont. If a man pray in aid of the King in a real action, and the E aid be granted, it shall be awarded, that he sue unto the King in the Chancery, and the Justices of the Common Pleas shall stay until the Writ of Procedendo in loquela come unto them.

And then they may proceed in the Plea, until it become that they ought to give Judgment for the Plaintiff, and then the Justices ought not to proceed unto Judgment, until the Writ cometh to them to proceed to Judgment, which is called

a Writ de procedendo ad Julicium.

27 H. 8.9. Eliz. Dyer. 257, 258. Ve. 28. H. 6.4. And to it is, if the defendant in a personal action prayin aid of the King, and the aid be granted now the Judges ought not to proceed until Procedendo in loquela comes unto them, and then they may proceed and try the issue joyned; But yet they shall not give Judgment until a Writ cometh to them to proceed to Judgment.

And if the King by his Writ certifie to the Justices that F
the lands are select into his hands, &c. then they shall stay
until the Writ de procedendo in loquela be afterwards sent unto

them.

And so, if it appear to Judges of Record, that the lands are selfed into the Kings hands, or if it appear to the Court by pleading or shewing of the party, that the King hath interest in the Land, or shall lose Rent or Service, there the Court ought to stay until they have from the King a Procedendo in loquela, and if the Procedendo be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a man have aid of the King, the *Proceedendo* ought to make mention of the aid prayer, and recite the fame in the Writ, commanding them for to proceed in the plea, other-

wife it is not good.

And if Conusance of plea be granted, &c. in an action real G fued in the Common Pleas, and afterwards in the Franchise, the Tenant pray in aid of the King upon a good cause, and hath the aid granted; the Procedendo shall be parted to them in the Franchise.

And if the King write unto the Justices to prorogue the H Assise because the Defendant is in his service, yet the Justices

ought to proceed, and not to flay for the fame.

And

And if verdict pass for the Plaintiff in Affise of Novel diff. before the Justices of Affise, and before they give Judgment by a new Commission new Justices are made, then the plaintiff in the Affise may sue forth a certiorari directed unto the other Justices to remove the Record before the new Justices. that they may proceed unto Judgment, and the form of the writ is fuch.

Rex dilect. & fideli suo E. salutem. Monstravit nobis H. quod cum ipse nuper arrain. quand. aff.novel. diff. coram dilett. & fidelibus nostris H. de T. & B. nuper Justiciariis nostris ad aff. &c. affign. per breve nostrum versus R. &c. & alios, &c. contentos, de tenementis in L. ac licet vos & prafat. B. aff. illam secundum legem & consuetudinem regni nostri ceperitis. judic. tamen super veredicto aff. prædict. pretextu cujusdan commissionis nostre, dilettis & fidelibus nostris I. de C. & I. de I. de omnibus aff. juratis & certificatis coram quibuscanque Justiciariis nostrisin Com. prædict. per brevia nostra arrain. capiend. postmod. fact. adhuc restat reddendi in ipsius H. damnumnon modicum & gravanen, per quod expediens est & ne-cesse, quod prædiet. I. de C. & I. super record. & process. ass. prad. coram vobis & praf. B. habit. certiorent. vobis mand. quod rec. & proc. &c. tangentibus praf. I. de C. & I. sub figillo vestro distincte & aperte fine dilatione mittatis, & hoc breve. Mandamus enim I.C. & I. quod receptis & visis record. & process. præd. ad judicium præd. secundum legem & consuetudinem regni nostri procedant. Teste, &c.

And the party plaintiff may fue another Writ unto the new Justices, that when the Record is sent unto them by the old Justices, that they receive and look upon the Record, and then to proceed to Judgment, and the form of the Writ

is fuch.

Rex dilectis & fidelibus suis R. de C. & J. de J. & Justic. ad aff. &c. affign. falut. &c. Monstravit nobis H. &c. (ut supra, usque ibi ) coram dilectis & fidelibus nostris I. B. & vobis praf. I. de C. nuper Justiciariis nostris, &c. de tenementis in L. & postmod. ad prosecutionem insius H. nobis suggerent. præfat. B. & vos pref. I. de C. aff. illam cepiffe, & ad judicium, &c. distulisse, mandaver. prefat. B. quod re- [154] cord. & process. asf. preditt. coram eo et vobis pref. R. de C. habit. una cum brevi originali, &c. vobis prafat. R. de C. et I. de J. dileHo et fideli nostro C. de L. postmodum Justic. &c. asign. distincte et aperte mitter. et breve nostrum quod sibi inde venerit, vobis et prefat. R. de C J. de J. et præfat. C. de L. per aliud breve nostrum dederimus in mandat. quod receptis et visis record. et process. prædict. adjudicium prædictum Dd 4 secundum.

fecundum legem & consuetudinem regni nostri reddend. procederetis. Et licet idem B. record. & process. ass. præd. coram vobis præsat. R. de C. I. de I. & præs. C. de L. missset, Judiciis tamen ass. præd. adhuc restat. reddend. in ipssus H. damnum non modicum & gravamen; Nos ea de causa negotium prædictum, quatienus secundum legem & consuetudinem regni nostri poterit, maturari volentes, et idem H. ulterius inde sieri justitæ complementum: vobis mandamus, quod vos vel duo vestrum viss er examinatis record. et præd. ad justic. præd. secundum legem & consuetudinem regni nostri reddend, procedatis. Teste, & c.

And upon that Writ if the Justices do delay to give Judg-A ment he may have an Alias, and afterwards a Pluries directed unto the same Justices, vel exusum nobis significatis; and if the Justices upon the Writ will not give Judgment according to the Writ; Quere whether the plaintiff may have an Attachment against them, because they are Justices of Record.

But see in the Register amongst the Writs to remove Re- B cords, many Writs to proceed to Judgment, &c. of several

forms.

And if the Chaplain of a Chauntry bring an Affife of Novel C diff. against another Chaplain for lands, and the defendant claimeth the same Chauntry by the Kings Collation, and prayeth in aid of the King. Now if the defendant cannot shew title in the Chancery for the King, he may have a Procedendo, directed unto the Justices of Affife, that they proceed unto the taking of the Affife, notwith flanding the allegation made of the Kings Collation; and he may sue the like Writ where the Defendant doth pray in Aid of the King in Affise by the Kings grant, and have that granted if he cannot shew matter in the Chancery, which proves the Kings Title; the Plaintist shall have a Proceedendo, That they proceed to take the Affise, notwith standing the allegation made of the Kings Grant.

And there are divers Writs in the Register directed unto Justices of Assis, that they do not proceed in the Assis against the Desendant dummodo sit in servicio Domini regis in the war, but to continue them; but these writs are made by vertue of an Act of Parliament, made for that time as it seemeth. But if the King certifie by his writ unto the Justices, That the lands are in his custody, by reason of non-age of any heir, or by an Inquisition taken and returned in the Chancery: commanding that they do not proceed, the King not consulted with; then it seemeth the Justices ought to stay for the time, although there is not any Office sought to stay for the time, although there is not any Office sough to stay for the time, although that it be not true, &c. And

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in attaint for the Plaintiff if he be in war, in the Kings service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain day, &c.

- And in Affife of Novel diff. if the King fend his Writ to the Justices reciting that the Defendant holdeth the land of the King by gift by his Charrer for life, commanding them that they do not proceed, the King not consulted: Now although the Tenant will not plead the same, it seemeth, that by that writthe Justices ought to stay their proceedings. So if the King recite in the Writ, the Tenant is in his service in war beyond the Seas, or in Scotland, and that he holdeth for life by the Kings Charter of the Kings gift, commanding them not to proceed, the King not confulted, but to continue the Affiseuntil a certain day, there, it seemeth, they shall stay their proceedings; for the Tenant cannot plead it, &c. For if the Escheator will say, That he hath seised the Lands into the Kings hands in an Affife brought by any person, in that case the Court shall surcease, a fortiori, by the Kings Certificate: and divers fuch writs are in the Register,
- In Affife of Lands and Tenements, the Defendant pleads two or three records in bar to divers parcels of the Land which are in the Treasury, and the Plaintiff denieth those Records, the Defendant ought for to remove those Records out of the Treasury by a Certiorari directed unto the Treafurer and Chamberlains of the Exchequer. And if he fue forth fuch certiorari to the Treasurer, and Chamberlains, and they certifie some of the Records in the Chancery to the King, and moreover certifie, That there are other Rolls of the same Justices, of which they have not yet made full fearch. Upon that Certificate made by the Treasurer and Chamberlains in the Chancery, the King shall fend his Writ unto the Justices, commanding them to continue that Assise until the next Affines, that full fearch may be made of those Records, so that the Tenant lose not his Lands for faileur of the Records: and fuch writ is in the Register.
- G And if a man fue an Affise before the Justices of Affise, and the Tenant plead Bastardy in the Plaintiff, upon which a writ is awarded to the Bishop to certifie at the next Affises; and before the next Affises the King maketh new Justices, and the ancient Justices do certifie the Record of Affise unto the Treasury, the Plaintiff ought for to sue a Certificari to remove the Record out of the Treasury

ry into the Chancery by a Writ to the Treasurer and Chamberlain, and upon that Record sent unto the Chancery, he shall have a Writ of Mittimus sent unto the Justices reciting the matter; and in the end of the Writ shall be this clause:

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Nos ut partibus prædictis in eadem aff. fieri valeat quod juftumeft, record. & proceff. præd. placiti, que coram nobis in Cancellaria nostra certis de causis venire fec. vobis mittimus sub pede figilli nostri mandantes, ut his inspectis, necnon certif. præd. Episcopi coram vobis super hoc, ut dicit. missa, ac recept. à Vic. Com. prædicti brevi originali ejusdem, quod penes ipsum remanet, ficut per inspection. corund. record. & proceff. nobis constat iterum in eadem aff. juxta tenorem brevis & placiti prædiffi procedat. & eidem partibus fieri fac. quod de jure & secundum legem & consuctudinem regni fuerit faciendum. Mandamus enim eidem Vic. quod dictum breve vobis liberet ad proximam Seffion. veftram in Com. prædict. Tefte, &c.

And if a man fue an Affise before Justices against one A Tenant, and in the same Assise he name the Mayor and Communalty of any Town as Diffeifors, or Bailiffs of any Liberty as Diffeifor, unto the end they may not have Conufance of the plea; or that they shall not make the panel; Now he may fue a special Writ in the nature of an Audita querela directed unto the Justices of Assise to enquire of the matter, and to do Right unto the parties, and if it be found, it shall abate the Affife. Ve. Statute 9 H. 4. cap. 5. and fee the like Statute made for the Sheriff. Anno 11 H. 6. cap. 2.

fatulate But the Sheriff or Bailiff ought to fhew the matter unto the Court, and pray that it be enquired of, &c.

to take no hill Finehi

Writ de quod ei deforceat.

Taw p: 02: 364:

THE Writ of Quod ei deforceat, lieth; where Tenant in B Tail, or Tenant in Dower, or by the Courtefie, or for First Sout : 1954 term of life lose their Landsby default in a Pracipe quod reddat brought against them, Then they have not any other remedy if they were fummoned according to the Law, &c. but this Writ of Quod ei deforceat: and this Writ is given by the Statute of westm. 2. cap. 4. and the Writ is mentioned in the Statute, and the form is fuch;

Rex Vic. &c. Pracipe A. quod, &c. redd. B. que fuit uxor C C. unum messuagium cum pertin. in N. quod clamat esse rationabilem dotem suam. Vel sic, Quod clamat effe de rationabili dote Sua, & quod idem A. ei injuste deforc. ut dicit.

And if the Tenant in Frankmarriage bring the Writ, then D

the Writis;

Quad

# Writ de Quod et deforceat.

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Quod jufte, &c. reddat B. unum meffuagium cum pertin. quod clamat effe jus & maritagium fuum, & quod idem A. ei. injufte deforceat.

And if he be Tenant in Tail, then the writ is,

Quod redd. &c. quod clamat tenere fibi & hared. de corpore suo excuntibus & prædict. A. ei injuste deforc.

And for Tenant for life the writ is,

Quod clamat tenere ad terminum vite fue. Vel, for Tenant

by Courtefie, Quod clamat tenere per legem Anglia.

And the Register is, That this Writ for Tenant by the Anigahs, Sond Conrtesie, is by Equity of the Statute. But if the Tenant The Down. in Tail, or fuch other Tenant who hath a particular estate, lofe by default where he is not fummoned, &c. Then he may have a Writ of Disceit, or a Quod ei deforceat, as he pleaseth.

If a man lose by default in an action of wast sued forth against him, he shall not have Quod ei deforceat, for the verdict 2 H. 4.2.

which found the wast.

Hankford. And if a man lose any Land by default in a Writ of Right contr. in a Court Baron, he may remove that Record into the 41 E.3.8. Common Pleas, and have a Quod ei deforceat upon that vr. 44 E.3. Record; and so he shall have the Quod ei deforceat, although 2 E. 4. II. F he do not remove the Record; but then it seemeth, That the 10 E. 4.2. Quod ei deforceat shall be sued in the Common Pleas, or in the 10 H. 7. 46. Court Baron, where he loseth the Land, as he pleaseth, tamen

And the Quod ei deforceat lieth against a stranger to the Recovery; as if a man recover by default, and maketh a Feoffment, The Qued ei deforceat shall be brought against the

Fcoffee.

Quære.

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And if a woman lose by default, and taketh Husband, she and her Husband shall have the Quod ei deforceat; But if Tenant in Tail loieth by default and dieth, his heir shall not have the Quod ei deforceat, but a Formedon; for that is his Writ

of Right.

Where a woman hath Dower affigned her in the Chancery for the non-age of the heir, who is in Ward to the King; and afterwards the heir at full age fueth a feire facias in the Chancery against the Wife to avoid that endowment, and recovereth in that Scire facias by default of the Wife, Now the Wifeshall have a Quod ei deforceat in the Common Pleas upon that Recovery.

And so if a man recover in the Kings Bench any Land by default, upon a Scire facias sued out of any Record which is there, the Tenant who loft by default, shall have his Quod ei deforceat, and shall sue the same in the Common Pleas. 46 E.3.21.

If two Coparceners Tenants in Tail lose their Lands by de- H fault, they shall joyn in a Quod ei deforceat, and yet the default of the one is not the default of the other. M. 46 E. 3.

And in a Pracipe quod reddat, if the Tenant for life or in I tail appear, and after depart in despite of the Court, he shall lose his Land, and yethe shall have a Quod ei despreeat, for that recovery is by his default, because he did not appear when he was demanded.

And if Tenant in tail, or Tenant for life after the mife joyned in a Writ of Right depart in Despite of the Court, he loseth his Land, and there he shall not have a Quad ei dejarceat, because Judgment final shall be given against him in that case.

Old. N. B. 155. contr. 10 E.4.2.

If the husband and wife be leifed of Land in the right of A the wife, for the life of the wife, and they lose the Land in a Pracipe quod reddat by default, yet they shall have a Quod ei deforceat, &c. Tim/99/1986.

And if Tenant for life loseth his Land in a cessavit brought against him by default. yet he shall have Quod ei desorceat

by the Statute of welt. 2. A. 5 E. 3. & M. 6 E. 3.

And if Tenant by Receipt upon the default of Tenant for life appeareth, and is received, and pleadeth, and afterwards loseth by Action tried; yet the Tenant for life shall have a Quod ei despresat, for the judgment is given against him by his

default. It onit fors 8.

And if the Tenant vouch, and the vouchee will not appear, B for which the Tenant loseth by default of the vouchee, It is to fee whether the Tenant shall have a Quod ei deforceat, for he loseth the Land by the default, although it be not his own default, for the Statute is, Et cun temporious retroactis cum aliquis amisisset terram suam per defaltam, non habeat aliud resuperare quam per breve de recto: and there it doth not fay, per defaltam suam, but only by default. But after in the Statute,it faith, Provisum sit; quod de cætero non sit eorum defalta eis ita prejudicialis, oc. And by that it seemeth that the Tenant ought to make default: But it seemeth that the default of the vouchee, is the default of the Tenant, and to default in both: Quere of that. But if the Tenant vonch, and the vouchee ap. peareth and entreth into the warranty, and afterwards loseth by default, now if the Tenant lose by the default of the vouchee, he shall not have a Quod ei deforceat, because he shall have judgment to recover over in value against the vouchee, by the default of the vouchee, so as he shall have recompence. But if the vouchee doth not appear, but maketh default, then he shall lose the Land by the default of the vouchee; but that is not the default of the Tenant, & therefore Quare of that case. And

Writ de Attornato faciendo vel recipiendo.

And if husband and wife lose by default, the Land of the 1/19mf+ wife which she holdeth for term of life, if the husband dieth, 3 ff. she shall not have a Quod ei desorceat, but a cui in vita, for it is a demile made by the husband. And when he bringeth the Quod ei deforceat, he counteth that he was seised of the Land in his demesse, as of free-hold, or in his demesse in tail, S. 48,E.3.8. without shewing of whose leafe, or gift he was seised, and he acc, 2 E.4. ought to alledge Esplees in himself, &c. and then the defen- 11. ac. dant ought to deny the right of the demandant, &c. and The Tenant fhews, how that at another time he recorded the Land against in the Qued the demandant, by Formedon, or other action, and shall say may plead in the end of his plea, Quod ipse paratus eft ad manutenendum any bar as in jus & titulum suumprædict. per donum prædict. &c. unde petit other action; judic. Oc. And then the demandant in the Quod ei deforceat and then the shall traverse that title, or may shew matter to bar that title, Demandant &c. but he shall not make defence, and then plead in bar, as vouch by he shall do in the Formedon, &c.

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### Writ de Attornato faciendo vel recipiendo.

HE Writ de Attornato faciendo or recipiendo lyeth, where covery then a man ought to do fuit at the County, or at the Hundred, he may. or Wapentake, or other Court, and he would make Attorny 33 H.6.46. for him to appear at the same Court,&c. And if he be in doubt quod nota. whether the Sheriff will admit fuch a man for his Attorney which he maketh; then he who would make fuch Attorny, may fue that Writ directed unto the Sheriff, or Bailiff of the hundred, commanding them to receive such a man to be At-

torney, for him to appear, &c. and the Writ is fuch: Rex Vic. &c. Quia per commune confil. regni nostri provif. est quod quilibet liber homo, qui sectam debet ad Com. Tithingum, Hundredum & Wapentagium,libere possit facere Attorn. suum ad sect. fuam pro eo faciend: Tibi præc. quod Attorn. quem S. loco fuo Attorn. voluer.ad fectam pro eo faciend.ad Com.tuum prædict. Tithingam tuam de A. & B. Hundred. de C. & D. Wapentagium tuum de E. & F. loco ipfins S. fine difficultat. ad hoc recipias. Tefte, &c.

Otherwise unto a Bailiff of a hundred, thus:

Rex Ballivis suis de Hundredo 7. Hundred. de Cobham et Bray falut. Quia per commun.confil.regni noftri, &c.qui fectam debet ad Hundred.liber.possit,&c.vobis præcip.quod attorn.&c.ad prædict. Hundred 7. Hund. de Cobham & Bray loco ipfius S. &c.

Otherwise unto the Bailists of another Lord.

Rex Balliv. A. de I. salut. Quia per Com. consilium, &c. qui sectam debet ad curiam dicti domini sui libere possit, &c. vobis

the Statute of VVeft. 2. cap. 4. Bur if he make his bar by

Writ de Attornato faciendo vel recipiendo.

vobis pracipimus, &c. ad Curiam dicti domini vestri de I. loco.

ipfins S. fine difficultat. ad hoc recipiat. Tefte, &c.

And by that it appeareth, That the Tenant may make Attorney by his Letters Patents to do fuit at the Court of his Lord. And if the Tenant by his Letters Patents under his feal make Attorney for him, to do suit for him at the Lords Court, or at the Hundred, and the Bayliffs will not admit of him, &c. then he shall have a writ unto them in this form;

Rex Ballivis Decani & Capitul. Ecclefie beate Maria Linc. de C. vel Hand. de S. Salut. Quia, &c. (usque ibi) pracipimus, quod attorn. quem S. per literas suas patentes loco suo attornar. voluerit ad fectam pro ec faciend. ad Cur. dictorum Decani & Capit.de C.vel ad Hundred. prædict. Decani & Capitul. de C. loco ipfins S. fine difficultate ad boc recipiatis bac vice de

gratia nostra spec. &c.

And for the Guardian there is another Writ thus:

Rex, &c. Vobis mandamus, quod atternat. quem S. cuftos terrie & hered. R. loco suo attornar. voluerit ad sectam pro eo, nomine dicti hared. faciend. Oc. loco ipfius custodis fine difficultate ad boc, &c.

Or thus to the Bailiffs of the King:

Rex Ballivis suis bonoris Peverel in Com. N. falutem. Quia, &c. vobis pracipinus, quod attorn. quem S. loco suo attorn. voluerit ad sectam pro eo faciend. ad Curiam nostram honoris

præd. in Com. præd. loco ipfius S. recipiatis, &c.

And if the Lands of any Tenant be in ward to the King A for the non-age of his heir, becau e he holdethother Lands of him in Capite, &c. and his other Lords will distrain for fuit during the time the Lands are in the Kings hand, or in the hands of his Committee, Then the King or his Committee shall have a special Writ unto the Bayliffs of the other Lords, that they do not distrain the Committee, nor in the Lands, &c.during the time he is in the Kings hands, or in the hands of his Committee, and if they have distrained them, that they deliver back the diffress again; and that Writ appeareth in the Register.

And if the King hath any Lands or Tenements in Ward, during the non-age of an Infant, and the King in Chancery assigns Dower unto the Wife of the Husband who was Father to the Ward of Lands holden of other Lordships; Now if the other Lords will distrain the Tenant in Dower for fuit at their Court during the time the lands are in the Kings hands, the Wite thall have a Writ unto the Bailiffs of the other Lords, commanding them that they do not distrain her. And recite in the Writ all the special matter; and

if they have taken any distress, that they deliver it back again.

If a man make an Attorny to do fuit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorny, Or if the Bailiffs do admit him for Attorny, and afterwards discharge him after the year; supposing that he ought not to continue Attorny for the party above one year; Or for any other unreasonable cause they discharge him to be Attorney for the party; Then the party may have a special Writ directed unto the Bailiffs, &c. commanding them that they receive him for his Attorney, and thereupon he may have an Alias, and a Pluries, and an Attachment against them returnable in the Common Pleas, or in the Kings Bench, if they will not admit him for his Attorny, or return cause upon the Pluries, which shall be allowable, wherefore they do not admit him; and the form of the Writ is such:

Rex Ballivis A. de Hundredo de B. salutem. Exparte C. nobis est oftensum, quod cum ipse per breve nostrum attornatum suum ad sectam pro eo faciendo ad Hundredum prædict. domini vestri de B. in eodem Hundredo coram vobis fecisset, & idem attornatus per idem breve ad hoc admissus, sectam illam hactenus fecerit, sicut moris est in regno nostro, vos presumptioni vestræ voluntarie innuentes, & causam prætendentes, quod potestas hujusmodi Attornati ultra An. durare non debet, ipfum C. præd. fectamper Attorn. sum præd. facere non permittitis, in ipsius C. damnum non modicum & gravamen, de quo miramur quam plurimum, & movemur. Et quia virtus brevium nostrorum de bujusmodi attornat. faciend. terminum non capit, nec terminus limitatur durantibus person. quæ ad hoc requiruntur: Nos ne idem C. vel alii indebitè vexentur vel graventur occasione prædicta, remedium super hoc adhibere volentes : Vobis pracipimus, firmiter injungentes, quod ab hujusmodi voluntariis & indebitis vexationibus & gravaminibus eidem C. vel aliis ea occasione de catero inferenci. desistentes, ipsum C. sectam præd. per Attornatum suum præd. fine difficultate qualibet facere permittatis, juxta tenorem prioris brevis nostri vobis inde directi. Et ita vos habeatis in hac parte, quod præd. C. occasione præd. non ponatur in defalta, nec in aliquo sit perdens, & quod non oporteat nos super hoc amplius solicitari, per quod manum ad hoc aliter apponere debeamus, Teste, O.C.

C Note; That the party may make Attorney by the Kings Writ directed unto the Bailiffs, commanding them for to receive such person for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff to receive any such person for Attorney, that

he will present unto the said Bailiss or Sheriss to be his Actorney to do his suit; Or he may make Attorney by Letters Patents directed unto the Bailiss without suing forth any such Writ.

And if a man fue forth a Writ directed unto 'the Bailiffs to admit one for Attorney to do his fuit for him, and the Bayliffs refuse for to admit him; Now the party who sued forth the Writ shall have an Attachment against the Bailiffs for that resultal, without suing forth an Alias, or a Pluvies directed unto them.

And so the same Law is, If the Tenant by his Letters Patents maketh one his Attorney to do his suit for him, and the Sheriff or Bailiff of the Court doth resule to admit him for his Attorney: Upon that resulas, the party shall have an Attachment against the Bailiffs, &c. although he hath not sued forth any Writ directed to him before, because they do against the Statute, which requireth, That they admit him for Attorney whom the Tenantwill make to be his Attorney.

And he shall have the like Writ against the Bailiss of any D other Lord, who refuse to admit an Attorney to do suit for the Tenant in any Court Baron, and that Writappeareth in

the Register.

#### Writ pro Exoneratione Secta ad Curism Com. vel Baron.

1500)

This Writ lyeth where the Tenant holdeth his Land to A do fuit at the County Court, Hundred, or other Court Baron, or Wapentake or Leet, and he who ought to do the fuit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by such service, will distrain him to do his suit at his Court during the time he is in Ward unto the King or his Committee; his Guardian shall sue this Writ unto the Sherist; or Bailists of the Court, that they do not distrain him secto do the suit during the time he is in ward to the King or his Committee; and the form of the Writ is such:

Rex Ballivis A. de I. salutem. Cum secundum legem, & C. B non debeamus sectam ad Cuvam alicujus sacere occasione terrarum & tenementorum quovumcunque in manu nostra, vel in custodia nostra existent. do ilii quibus bujusmodi custodias commiserimus custodias illas, durante custodia illa, adeo libere et ab omni secta quiete tenere debeant, ac si nos eas in manu nostra teneremus: Vobis pracipimus, quod ratione terre & tenementorum I. desuncti, qui de nobis tenuit in capite, & que sunt in custodia ejustem ejusdem R ex concessione nostra non distringatis, vel distringfaciatis, ad faciendum sectam ad Curiam prædict domini vestri

de I dur. cuftodia antedilla, & diftr. fi quam, &c.

And the like Writ shall be for Tenant in Dower, where she is endowed in the Chancery of lands which are in ward to the King, which lands are holden of other Lords, now if the other Lords will distrain the Tenant in Dower, to do shit for those lands which she holdeth in Dower, she shall

have a Writ for to discharge her, which is such:

Rex Ballivis A de B salutem. Cum secundum legem, &c. (ut supra, usq, ibi) existentes, & mulieres terras vel tenementa tenentes in dotem de hujusmodi custodiis, ea adeo libere & abomni secta quiet. tenere debeant dur. custodiis illis, ac si prædierras & tenementa in manu nossirateneremus: Vobis præcipimus, quod M & R uxor ejus occasione terrarum & tenementorum quæ fuer. H in F quæ de nobis tenuit in capite, & quæ iden K & M tenent in dotem ipsius R de dono prædiet. H quondam viri sui, & de bæreditate silii & hæred. A insra ætatem & in custodia nostra existent. non distringatis ad saciend. sectam ad curprædiet, domini vestr. durante custodia nostra supradieta, & distr. &c.

And if the heir be in Ward of the King and also his lands, and afterwards the Tenants Paravail who hold of the heir are distrained by other Lords, of whom the heir holds his lands, to do suit unto the Lords Court, those Tenants shall have a Writ directed unto the Lords Bayliff, to dis-

charge them of the fuit, and the Writ is fuch:

Rex Vic' Nott. salutem: Cum secundum legem & consuctudinem regni nostri, nullus qui tenet de hæred. infra ætatem & in custodia nostra existent, teneatur ad sectam saciendam ad Com. Hundred. Wapentag. seu alias Cur. pro terris & tenementis ipsorum hæred. in manu nostra existent, durant. custod. supradiest: Tibi præcipimus, quod Abbat. de Derley tenent. quorundam terrarum & tenementorum Rogeri silii & bæred. Roger. Bellers desuncti in Chilwell. qui de Domino Rich. nuper Reg. Angliæ tenuit in Capite, occasione terrarum & tenementorum ejustem bæred. in eadem Vill. in manu nostra ratione minoris ætat. suæ existent. non distring. vel distring. sacias, ad faciend.sectam ad Vapentagium de B durante custodia supradicta.

And if the heir and his lands be in the Kings Ward, for lands holden of the King in Capite, and afterwards the other Lords of whom the heir holdeth parcel of his lands will distrain for any Service or Rent to them due, then the King or his Committee may sue a Writ for them

Writ pro F. xoneratione fella ad

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to surcease from such distress, and the Writ is such:

Rex Ballivis, &c. Cum hared. infra atatem & in custodia nostra existentes servitia aliqua durantibus custod. illis facere minime debeant seu teneantur secundum legem & consuetudinem regni nostri, Vobis pracipimus, quad distriction. quam Abbati de W tenenti hared. Willichmi de W, qui de nobis tenuit in Capite infra atatem & in custodia nostra existent. pro homag. fidelitat. ac aliis servitiis pradict. hared. praf. Dom. saciend. fac. supersedeatis omnino durante custodia antedicta, & distring. si quam, &c.

And also the Tenant in Dower shall have such Writ if the Baylist of other Lords will distrain her, for the relief of the heir or other Services during the time that the heirs lands are in the Kings custody, or in the custody of his Committee. And it seemeth that he may sue this Writ directed unto the Lord himself, as well as to the Baylists, or

unto them both.

Note, that if a man holdeth of another to do suit to his Mill,&c. if he do not the suit, he shall have a Sasta ad Molendinum against him, and by the same reason, if a man hold of another Lord to do suit athis Court of the Mannor of D is he do not the suit, the Lord may have a Writ of Sesta ad Curiam suam faciend. as well as the other writ. But yet there is no such Writ in the Register, because he may distrain for that suit, and shall not have any other profit but only appearance in his Court. But in the other Case de Sesta ad molendinum, he shall have other profits by the suit; the Toll of the Grain he shall grind there, and for that profit it seemeth the action of Sesta ad Molendinum was given, and for the suit at the Court but only a distress, tamen Quare.

If the King have Lands by Forfeiture or Escheat, and A leaseth them for life, at will, or in tail, and if the Lord of whom the Lands are holden will distrain the Kings Committee or Lesse for suit or other Services, he shall have a special Writ unto the Lords Bayliss to surcease, &c.

And if lands descend unto diverse Coparceners, for which one suit shall be done at the Lords Court, if parcel of those lands come into the Kings hands, then he shall have a special Writ to discharge him of the suit for the time they shall be in the Kings hands, which shall be such:

Rex Vic.&c. salutem. Cum de communi confilio regni nofiri, provis. sit, quod si hæred. aliqua, de qua unica secta debeat. ad plur. hæred. &c. vel ad alios per vendition. &c. devolva-

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Vc.31 H.S.

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THT :

tur : unica tum, &c. fieri consuevit, ac quadam hareditas. que fuit H de B de Baronia de B de qua quidem Baronia, unica fecta tantum ad Com. tuum predict. debet. ad dilect. & fidel. nostrum W de H, & Ifil. & hared. R de Sinfra atat. & in custod. dileA. & fidel. nostri R de N ex commissione nostra exiften. per venditionem sit devoluta, ut accepimus: Nosque facundum legem & conf. &c. non debeamus fectam aliquam facer. occasione terr. & tenement. in manu nostra, & in custod. nostra exist. & illi quibus bujusmodi cust. commiserim. illas adeo libere & ab omni fecta quiete teneri debeant, ficut nos eain manu noftra teneremus: Tibi præc. quod si ita est, tunc non distr. prad' W de H, ad fac. feA. ad com. tuum prad. pro terr. & tenement. de Baronia præd. dur. cuftod.dieli hæredis supradiet. &c.

And if the wife be Tenant in Dower of any land, the shall not be distrained to do suit for that land which she holdeth in Dower, if the heir have fufficient land in the fame Country to be distrained for the same. And if she be

distrained, then she shall have such Writ:

Rex Ball. hundred. de N, salutem, &c. Cum secundum B legem & consuetud. Regni nostri mulieres tenentes in dotem, pro terris & tenementis suis, quas tenent in dotem, sect. ad bundr. vel cur. alicujus facere non debeant. Vobis pracipimus, quod A que fuit uxor B ad faciend. fectam ad bundr. prædict. pro terris & tenementis q. tenet in dotem & libero tenemento quod fuit præd.B quond. viri fui, contr. legem & confuetudinem Regninostri non distringatis, dummod. hared, prad. B alias terr. & tenementa in balliva tua habet, per quæ distringi valeat ad festam illam pro prad.dote faciend. o diftri &. fi quam fecer. &c. eam fine dilatione liberari facias, &c.

And if lands descend to many Coparceners, whereof one Plowd. fuit ought to be done for the whole land; now if the land Com. 240. be holden of the King, then all the Coparceners ought to Aca do the fuit, as well after partition as before: But if the land be holden of another Lord, then that Coparcener or his Feoffee who harh the part of the eldest fister shall only do f 67 200 the fuit, and the Lord will distrain the other Coparceners, then they shall have a Writ against him directed to him or his Bayliffs to discharge them of that suit, and distress ta-

ken, &c. and the Writ shall be such:

Rex C, vel ball.C, falutem,&c. Cum de communi, &c. provisum sit, quod si hæreditas aliqua, de qua unica sectatant. debeat. ad plur. hæred. participes ejufd. bered. vel al' per vend. feu alio mod. devolvatur, unica tant. fiat fecta pro hareditate illa, ficut prius fieri consuevit, ac quædam hæred. quæ fuit A in N, pro qua unica fect. tum. debet. ad cur. tuam de I, vel ad

cur. prædict.domini vestri de I, ad A, B, & C com. hæred. & participes hæred. prædict. sit devoluta ut accepimus: Tibi vel volis præcipimus, quod non distringas vel distringatis, prædict. A, B, & C ad diversas sect. pro portionibus suis hæred. præd. separatim faciend. ad curiam tuam de I vel ad cur. præd. domini vestri de I contra sorm. provis. prædict. & districtionem signam.

And if the Tenant enfeoff divers persons of lands for D which one ought to be done, if one of the Feosfees do the suit, &c. if the other Feosfees are distrained to do suit for that land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of Marle-

bridge, cap. 9.

And fo if the heirs or Feoffees shall do the suit at the County, Hundred, or Wapentake, if one do the suit, all of them are discharged, and if they be distrained, they shall

have that Writ.

And so if one Coparcener maketh a Feoffment of his part, or a man be Tenant by the Curtesie of one part of the land, yet one suit shall be only done by one Coparcener by him who hath the eldest part. And if they be joynt Feosfees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bayliss to whom the first Writ was directed, to answer that contempt, in which Writ he shall recover his damages, &c.

But if there be two Coparceners of land, for which one E fuit ought to be done, and the eldest fister will not do the fuit at the Lords Court, then the Lord may distrain the other Coparcener as well as the eldest Coparcener for that fuit, and if the Coparceners be distrained, then they shall have a Writ against the eldest fister to compel her to do

the fuit, and the Writ shall be such:

Rex Vic. &c. Si B & C fecerit, &c. tunc sum. &c. A, qd. sit, &c. ostens. quare cum de communi, &c. quod si hæred. aliqua, &c. (usque ibi) consuevit, & quod illa quæ habet enitiam partem, &c. ac quædam hæred. &c. (usque ibi,) sit devoluta, ut accepimus, & prædist. A habet partem hæred. illius. Et præfat. B & C parat. sunt. contribuer. pro portionibus suis ad sectam illam faciend. Idem A sectam illam pro se & præfat. B & C contra serve contradicit. ad grave damnum issarum B & C, & contra form. provisi. præd ut dic. & habeas ibi sem. &c.

And

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And if a man have lands in divers places in the County, and hath several Leets, &c. or Hundreds, and he is conftrained to come unto the Leet, or the Sheriffs Torn, where he is not dwelling or conversant, but is dwelling within the precinct of any other Leet or Hundred, &c. Then he shall have a Writ unto the Sheriff, for discharging him from coming to the Sheriffs Torn, or Hundred or Leet, or other place, than in the Leet or precinct of the Hundred where he dwelleth; and the Writ is such:

Rex vic. Wigorn. salutem. Cum de communi confilio Regni nostri provis, sit quod si qui in diversis hundred. habeant tenementa, non habeant necesse venire ad turnum vic. nisi in ball. ubi fuerint conversantes: Tibi pracipimus, quod non distring. S, ad veniend. ad turnum tuum in hundredo nostro de I contra

form. provis. prædia. &c.

And look the Statute of Marlebridge, cap. 10. By which it appeareth, that the Sheriff ought for to hold his Torn as he hath used in the time of Rich the first, and John, Kings

of England.

And by the Writs it feemeth, that he shall hold his Torns in every Hundred, &c. And if the Sheriff distrain against that Statute any man, then he may sue that Writ upon the Statute, &c. and if he do distrain him after, then he shall have Attachment against the Sheriff, &c. And the Writ is such:

Rex Coronatoribus suis in com. Lincoln. salut. Si A secerit, &c. tuncponite, &c. B. Vic. nostrum com. pr.ed' quod sit, &c. ostens, quare cum de communi consilio, &c. (usque ibi,) conversant, idem B velidem vic. distrinxit præf. A, ad veniend. ad turn. ipsius vic. de bundred. nostro de I, contra sorm. provis, predict. & contra sorm. mandati nostri prius ei inde direct. ut dic. & habeatis, &c. Et averia ipsius A ea occasione capta

interim deliberari faciatis, Tefte, Oc.

And if a man have lands within the precinct of several Leets, or in one County, and he dwelleth within the precinct of one of them, and he is distrained to come unto another Leet where he dwelleth nor, then he shall have such Writ unto the Sheriff, or Baylists of the Court, &c. that they do not distrain him to come to that Leet, within the precinct whereof he dwelleth not, and the Writ is such:

Rex, ball, suis bonoris de C in com. Lincoln. vel, ball. A de B in com. &c. salut. Cum de communi consilio, &c. si qui in divers. hundred. &c. non habeant necesse venire ad visum franc. plegii, nisi in hall. ubi suer. conversant.: Vobis Præc. quod non Ec 3 distringat.

distringat. ad veniend. ad visum franci plegii in cur. vestra, vel in cur domini vri. honor. predict. in com predict.cont.form.&c.

& distriction. fi quam, oc.

And it appeareth that if the party be distrained, after that he hath sued the Writ directed unto the Sheriff, or Bayliffs, that they do not distrain him: That he shall have an Attachment against them. But it seems reasonable, that first he have an Attachment against the Sheriff, or against the Bayliffs, who distrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the precinct of another Leet, because the Statute of Ararl bridge is a prohibition in it self, and he who doth contrary to the Statute doth wrong unto the party, upon which he may have an attachment, without sungforth any

Note, that men or women who have entred into Religi-C on, ought not to come unto the Sheriffs Torn, or unto the Leet of any other without great cause; and if they be diflirained for to come, they may have a Writ out of the Chan-

cery to discharge them, which shall be such:

Rex Vic. &c Cum de communi consilio, &c. quod virire ligiosi non babeant necesse venire ad turnum vic. &c. Vel sic: ad visum franci plegii, niste eorum prasentia ob aliquam causam specialiter exigatur: Tibi precipimus, quod non distring. Abbat. de I ad veniend. ad turnum tuum, Vel sic: ad visum franci plegii, inhundred. nostro de F contra form. provisionis pradict. & districtionem.

And the Abbot shall have such a Writ unto the Bayliss of another Lord, that they do not distrain him to come to

his Leet.

And by the Common Law, Parsons of Churches shall not be compelled or distrained to come to the Kings Leets, or to the Leets of other Lords of the lands annexed to their Churches, and if they be distrained so to do, they shall have such Writ:

Rex Vic. &c. Cum secundum consuetudinem Regni nostri perfonæ Ecclesiast. ratione terr. & tenementor. suorum Eccles. suis annex. venire non debeant ad visum franc.pleg.in cur.nostra, vel aliorum quorumcunque: Tibi præcip. quod C parsonam Eccles. de I ratione terr. & tenement. suorum Eccles. præd. annexorum, ad veniend. ad visum syano.pleg.in bundred.de N non distringas contra consuet.præd.& districtionem.&c.

And Clarks who are not Parsons, nor have Benefices, shall not be distrained or compelled to come to Torns or Leets, but they shall have a Writ to discharge them, thus:

Rex

Rex Vic. &c. Cum persona Ecclesiaft. non habeant necesse venir. ad turn.vic. vel ad vifam franc. pleg. nisieorum præsent. ob aliquam causam specialiter exigatur juxta form. provisionis de communi confilio Regni nostri in consimili casu pro viris religiof. facta, ideo tibi pracipim. quod non distring. S parsonam Eccles. de N, vel capellanum, ad veniend. ad turn. tuum vel ad visum franc. pleg. nostri in hund. de I cont. form. provis. præd. ig diftrict. &c.

And women are not compellable nor diffrainable to come unto the Sheriffs Torns, nor to Leets, and if they be diftrained they may fue fuch a Writ, as a Priest may fue, and thereupon an Alias, a Pluries, and Attachment, &c. And because that women are not sworn in Leets as men who are of the age of twelve years or more are; It is faid, That when a woman is outlawed; that she is wayve, and not Outlawed; for the was never fworn to the Law, &c. But a man is faid Outlawed, because he was sworn to the Law; and now for his Contumacy he is put from the Law, and faid Outlawed, as it were Extra legem posities; and a woman is not so, for the was never sworn to the Law.

And by the Rule of the Register, two Women may sue that Writunto the Sheriffs or Bayliffs of the Leet, that they do not diffrain them to come to the Torn, or Leet, &c.

And if the Sheriff will distrain the Tenants in ancient See before demesn to come unto the Leet or Sheriffs Torn; they may 14 good Cahave one Writ for them all directed unto the Sheriff, com- fes for their manding him that he do not diffrain them, &c. to do any Priviledges. fuit at the Leet or Torn; and that Writ shall be sued in all their names if they will, as a Monstraverunt shall be sued : Or any of them may fue the Writin his own name if he be distrained to do such suit; and the Writ is such:

Rex Vic. &c. Monstraverunt nobis homines de manerio de D, quod. ē de antiquo Dominico Coronæ Angli. quod cum ipsi ad Torn. Vic. seu ad visum franc. pleg. extra libertatem maner. pd. venire non debeant nisi ipse vel eorum antecessor homines & tenentes de eodem manerio venir. consueverunt à temporibus retroactis, tu nihilominus homines nostros præd. ad veniend. ad Torn. in K, vel ad visum franc. pleg. in hundr. nostro de K cont. consuet. in eodem manerio hactenus usitatam gravit. distringis & ipsos multiplicit. ea occasione inquietas minus juste in ipsorum hominum or tenentium prajudicium manifestum & gravamen. Et quia præd. hominibus & tenentibus nolumus injuriari. tibi præcipimus, quod si ita est, tunc ab bujusm. districtionibus eis ex causa prædict. de cetero inferend. penit. desistas, & ipsos consuetudinibus suis, quibus bactenus rationabilit.usi sunt absq; impe-

impedimento seu calumnia uti permittas & gauder. ne querela

ad nos veniat iterata, Tefte, &c.

And if the Sheriff will distrain a man to do suit to the D Hundred or Wapentake twice in the year to do things appertaining to that Leet. Then he shall have a Writ upon the Statute of Magna Charta directed to the Sheriff, which shall be thus:

Rex Ball. suis de Wapentak. de R, sal. Cum in Magna Charta de libertatibus Angl. contiveat. quod nulus Vic. vel Ball. suis fac. torn. suum per hund. nist bis in anno & non nist in loco debito & consueto, viz. semel post Pasch. & iterum post festum S. Michael. ac sam ex querel. hominum & tenentium Abbat. de C accepimus, quod vos ipsos homines & tenent. in hac part. pergravar. machinantes, ipsos ad veniend. ad quodlibet wapentag. nostrum prad. ad præsentand. ibidem, ea q. ad visum franc. pleg. pertinet sam de novo gravit. distringitis, in ipsorum hominum & tenentium grave damnum & præsidicium manisestum, contra tenerem Magn. Chart. pr. d. nos eand. chart. in omnibus inviolabiliter observare volent. vobis præcipimus, quod dictos homines & tenentes ad veniend. cor am vobis ad wapentagium prad. ad præsentand. ea q. ad visum franc. pleg. pertineat contra tenorem charte præsed nullatenus distring. & districtionem, si quam, & c.

And by that it appeareth, That he shall not distrain to come to the Hundred to present a thing appertaining to the Leet but twice in the year; But to do fuit at the Hundred, to do that which appertaineth to the Hundred Court, he may distrain them several times to do the suit, and they shall have no remedy, because Suit at the Hundred is from

three weeks to three weeks.

### Writ de Quarentina babenda.

The Writ of Quarentina habenda lieth, where a man dieth E feifed of any Mcfuage and Lands, &c. and immediately after the death of the Hufband, the heir or he who ought to have the Lands after his death will put the wife out of the Mcfuage, &c. Then the wife shall have this Writ; for by the Statute of Magna Charta, cap. 7, the wife shall remain in the Capital Mcfuage after the death of her Husband by forty days, if it be not a Castle; And that Writ is Vicontiel, and shall be directed unto the Sherist, and he shall hold plea thereof, and the Writ is such:

Rex Vic. &c. vel ballivis suis S, salutem. Ex querel. B que fuit uxor D accepimus, quod cum in Magna Charta de libertatibus Angl. contineatur, qued vidue maneant in capitali Me-

Suago

Juag. maritorum suorum per quadragint. dies post obitum maritorum suorum præd. nisi mesuagia illa castra sunt; infra quod tempus dotes sue assignentur eisdem, & quod interim habeant tempus dotes sue assignentur essaem, & quou enterem vaccum.
rationabilia estoveria de bonis eorund. I deC, ipsam B statim post Intant may mortem predict. viri sui de Capitali mesu. quod fuit ejusdem D keep the in H licet castrum non sit, nec dos ei assign. fuer. violenter ejecit possession & ipsam estoverium suum de bonis eorund. coibus percipere non during the permitt', in ipfius B damnum non modic. & gravamen, & cont. time of tenor. Chartæ prædict. Et quia præf.B injuriari nolumus in hac Quarentine tenor. Chartæ prædict. Et quia præf. B injuriare notumus en val by force of parte, vobis mandamus, quod vocatis coram vobis partib. præd. the Statute & auditis hinc inde eorum rationibus, eidem B plenam & of 8 H.6.4. celerem justitiam inde fieri faciatis juxta tenorem Chart. præd. & 5 Ma. ne pro detectu justitia querela ad nos venerit iterata, Teste, &c. Dyer 161.

And upon that Writ the Sheriff shall award process a- / 62 gainst the party to come, and answer the same; and shall Nota by not flay until the County Court be holden; For this Writ Newenton. is a Commission unto him, and upon the same he shall im- The woman mediately make process against the party for to answer,&c. shall not within two or three daies according to his discretion, and and drink, thereupon to proceed as Justices shall do upon a Commission For the Sta-

of Oyer and Terminer, Jrc.

tute doth

to it. But Fitzherbert in Abridging the Case Quares, if the may not kill things for her provision, if there be not any provision in the house.

#### Writ of Contribution,

B THe Writ of Contribution lieth where there are Tenants in Common , or who joyntly hold a Mill pro indiviso, and take the profits equally, and the Mill falleth into decay, and one of them will not repair the Mill; Now the other shall have a Writ to compel him for to be contributary to

the Reparations, and the Writ is such.

Rex Vic', &c. Si A fecerit, &c. tunc summ. &c. B & C, quod fint apud W, &c. oftenf. quare cum iidem A, B & C quoddam molendinum in N pro indiviso teneant, & ipsi exitus inde provenient. pro equali portione percipiant, & ad reparationem & sustentac, ejusdem molendini teneantur, ac iidem B & Clicet proportionem de exit. illis ipsos contingen. percipiant, reparationi & sustentationi predict. molendini contribuere contradicunt, in ipsius A damnum non modicum, & gravam, ut dicit, & habeas ibi fum. & hoc breve.

And if there be three or four Coparceners of Lands, and the eldest Sister do the suit to the Lord of whom the Lands are holden for all the Coparceners, and the others will not allow her for her charges and losses according to the rate for the same suit; That Coparcenor who did the suit may have this Writ of Contribution; and the Writ is such:

Rex Vic', &c. SiB fecerit, &c. tunc summ. A & I uxorem ejus, & R& F uxorem ejus quod sint coram Justic. &c. ostens, quare cum de côi conssilio, &c. quod sint coram Justic. &c. ostens, quare cum de côi conssilio, &c. quod si hereditas aliqua, &c. (ut supra usque ibi,) & ille qui babet enitiam partem hereditatis illius, sectam illam faciat pro se & participibus suis ejusdem hereditatis & quod iidem participes contribuant ad sect. illam faciend. ac quadam hered. qua suit C in R, qua unica secta ad hundred. I de N tantum debetur, ad ipsum B & predict. A,I,R, & F particip. hereditatis pradict. sit devoluta, ut accepimus, & predict. B qui habet enitiam partem hereditatis illius, sectam illam fac. ad hund. prad. vel ad cur. prad. A,I,R & F particip. suis iidem A, I, R & F ad sectam illam faciend. contribuer. contradicunt, ad grave damnum ipsus B, & cont. sormam pro-

visionis præd.ut dicit, & habeas, &c.

And if there be many Coparcenors and the eldeft do the fuit, and the other Coparcenors agree with the eldeft for a Rate; now the Writ of Contribution shall be brought against the others, who would not contribute, &c. And if many be infeoffed of land, for which one fuit ought to be done,&c. Now if they agree among themselves, that one of them shall do the suit, and that the others shall contribute unto him, if he do the fuit, and afterwards the others will not allow him for that fuit according to their rate, Then he shall have the Writ of Contribution against them, and the Writ shall mention the agreement, &c. and if they cannot agree, then the Lord shall distrain them after all their suits, if the fuit be not done; But if one Feoffee of his own will do the fuit for them all, without any agreement for the same made between them, The Lord cannot then distrain the others for the fuit; for as to the Lord it is not material whether there be any agreement between them or not; but between the Feoffees he that did the fuit shall not have the Writ of Contribution against his Companions, with agreement thereof made betwixt them. But if one joynt Tenant D do make a Feoffment in Fee of his part, his Feoffee shall do a feveral fuit by himself. But the other Joyntenants shall do but one suit by the Statute of Marlebridge, cap.9. every Tenant in Common shall do several services and several fuits. And the process in this Writ is Summons, Attachment, and Diffress.

# Writ de Contra formam Feoffamenti.

The Writ de Contra formam Feossamenti lieth, where a 1.5 E.4.85.
man doth Enseoff another before the Statute of Quia Br. cont for
emptores terrarum, to hold of him by Homage, Fealty, and mam Feossament by deed, and afterwards he will distrain for suit or
other services to be done unto him; He who was enseoffed,
or his heir, shall have this Writ of contra formam Feossamenti,
&c.

F And this Writ may be directed unto the Lord himself, or unto his Eayliffs, commanding them that they do not strain him against the form of his grant; and this Writ is a prohi-

A bition in it felf. And if the Lord and Bayliffs do contrary to the Writs fent to them, The Tenant thereupon shall have an Attachment, and a Distress; and the form of the Writ

is fuch:

Rex I, vel ballivis I, salutem, Cum de Communi, &c. provisum sit, ne qui occasione tenementor. suor. distringantur ad sestam faciendam ad curiam dominorum suorum, nisi per formam seossamenti sui ad sestam illam specialit. tenent. aut ipsi vel eorum antecessores tenement. illa tenent. eam facere consuever. ante prim. transfretation. Domini Hen. Regis in Brittan. Tibi vel vobis præcipimus, quod non distringas vel distringatis A ad faciend. sectam ad curiam tuam de I, vel ad curiam predist. Domini vestrede N, contra formam provision. præd. districtio. &c.

And no person shall have this Writ of Contra formam Feosfamenti, but he who was enseoffed, or his heirs who are privies to the deed; But if the Feosfee to whom the lands were given to hold of the Feosfor, and his heirs by the deed make a feosfiment over to hold of the chief Lord, &c. The Feosfee shall not have this Writ de contra formā Feosfamenti, because he is not party or privy to the deed, but he shall rebut the Lord by that deed, to claim other services than are mentioned in the deed. And that Writ is a prohibition anto the Lord and his Bayliffs; and if he distrain after the writ delivered to him, the Tenant shall have an Attachment against him, and thereupon he shall recover his damages if it be sound for him, &c. and the parties Prohibition, Attachment and Distress.

And the Rule in the Register is: If any for suits undue against the form of any Statute, to the Court of any to be done be distrained, he may have a Prohibition against the distrainer, and after an Attachment if need be: And afterwards Attach-

ment.

ment, nor can be Attached, unless a Prohibition be first di-

rected unto him.

And the opinion of Parning is, P. 10 E.3. That if a man give land in Frankmarriage, or in Frankalmoign, that the donor shall not have a Writ of Contra formam Feosfamenti; nor his heirs, because there are not any services expressed in the deed, for which reason he is out of the Statute of Marlebridge. cap. 9. but they may rebut the Lord by such deed.

And if the Lord confirm the estate of the Tenant to hold by lesser services, &c. the Tenant shall have a Writ of Contra formam Feosfamenti; if he be distrained for more services than there are specified in the deed of Confirmation. M.

16 E.z. Avowry 243.

And in a Contra formam Feoffamenti, the person did count H upon the deed, and the Distrainer demanded over thereof, and could not have it. M. 2. E. 2. Accon. fur le Case 5.

And the contra formam Feoffamenti lieth only against the

Feoffor and his Heirs.

## Writ de Coronatore eligendo vel exonerando.

The Writ de Coronatore eligendo lieth, where a man who is K Coroner of any County dieth, or be discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County by the Freeholders of the County choose another in his place, and to certifie the Election, and his name who is chosen in the Chancery.

And in every County commonly there are four Coroners, L and in some Counties six Coroners, and in some Counties less as the usage is; and if any of them dieth, or is dif-

charged, then shall iffue such Writ:

Rex Vic. &c. Quia L nuper unus Coronatorum nostrorum in M tom. tuo diem clausse extremum, ut accepimus: This pracipimus, quod si ita est, tunc in pleno com. tuo de assensi ejusdem com. loco ipsus L eligi fac. unum alium Coronatorem juxta sormam statuti inde edit. & provis, qui prastito sacrament. prout moris est, extunc ea fac. & conservet, qua ad officii Coronatoris pertinent. in com. predict. & talem eum eligi fac. quo melius sciat & possito illi intendere, & nomen eius nobis scire fac. Teste, &c. And now it appeareth by the Writ, that upon Election made, the Sherist shall give him his oath duly to execute his office, Ve. Stat. West. 100.

And the Coroner shall be discharged of his Office by the N Rings writ sent unto him, and thereupon shall issue another

Writ

Writ directed unto the Sheriff to choose a new Coroner, L. 5 E.4. Ac. and that Writ shall recite the cause of the discharge of the by our Judg, other Coroner; and the writ shall be such:

her Coroner; and the writ man be fach:

nex Vic. &c. Quia R unus Coronatorum nostrorum com. tui discharged diverf. negotiis nostris in com. tuo faciend. ita occupat. eft quod by demife of ea que ad officia Coronatoris in codem com. pertinent exercend. the King, vacare non potest, ut pro certo intelleximus, ipsum ab officio illo because he is anovinus: Tibi pracipimus, quod unum alium Coronatorem, &c. made by ut supra, vel sic: Quia ex testimonio accepimus sed edigno, W. of others, Tunus Coronatorum nostrorum com. tui adeo languidus est, & who are by senio consectus, quod ad ea, &c. exercend. non sufficit, ipsum W commission. duximus ab officio illo removend. Et ideo tibi pracipimus, &c. 4 E.4.44. Vel fic: Quia W unus Coronat. &c. minus idon. est ad offic. illud exequend. ficut ex relat, &c. Vel fic: Quia accepimus, quod VV in coronat. com.prædict. nuper elect.terr.vel tenementa in eodem Com. non habet, in quibus juxta statum juum morari possit propredict. offic. exercend. Tibi præc. &c. Vel fic: Quia A unus coronat. &c. morbo paralysis percuss. &c. Vel, quia ex extremis partibus totius com. morat. per quod ea quæ ad offic. &c. commode exercer. non poteft. Vel, Quia in officium vic.com. prædict.est electus, Vel, in viridar. forestæ nostr. de S electus extitit per quod, &c. Vel, Quia non habet centum fol. terræ, ut dic. Vel, Quia non est miles, &c.

But it feemeth that at this day this last cause is not cause for to remove the Coroner: for if he have sufficient Lands within the County, it sufficeth, although he be not a Knight, notwithstanding the Statute which requireth that he be a Knight. For those words were put into the Statute, to the intent that he should have sufficient within the County, and for no other cause. And it seemeth the King by his Writ A may command the Sheriff to choose two or three Coroners,

if there want so many in the County. And if the Sheriff choose one to be Bayliff of the Hundred or Wapentake: or if the Lord of a Liberty choose one to be Bayliff of the liberty, who hath not sufficient land within the County, according to the Statute of west. 2. (but fee the Statute of 2 E.3. cap.4. thereof) then a Writ shall be fent unto the Sheriff for to discharge such Bayliff, and to choose another in his place, and upon that a man may have an Alias, and Pluries, and Attachment against the Sheriff. if that he do not according to the Writ; and the Writ is fuch:

Rex Vic. &c. Cum in Statuto and Westmin. nuper edit. contineatur, quod nullus sit vic. vel ball. libertatis', wapenta hundred, nec tithingi, nisi habeat terras & tenementa suffic. in

eodem Comitatu, unde nobis seu populo nostro in hac part respondere possit, si quis super eum conqueri voluerit, jamque intelleximus, quod W de T qui terras seu tenementa in eodem Comitatu non habet, ball. wapentagii nostri de B fecisti, in nostri contemptum, & populi nostri in hac parte damnum non modicum & gravamen, & contra formam Statuti prædict. Et ideo tibi præcip. quod seita est, tunc ipsum W à ball. præd. sine dilatione amover sacias, & alium loco suo competentem constitui vel ordinari sac. juxta formam Statuti præd. Teste, &c.

#### Writ de Electione Viridariorum Foresta.

The Writ of Election of the Verderors of the Forrest, C lieth, where any of the Verderors are dead, or removed from their Offices,&c. Then the King shall send a writ to choose another in his place, and it shall be directed to the Sherist, and is such:

Rex Vic &c. Quia A nuper unus viridar. nostrorum foresta nostr. mortuus est, ut accepimus: ideo tibi pracipimus, quod si ita est, tunc in pleno com. tuo de assensu ejustem comit. loco predict. A eligi facias unum alium viridarium, qui prastito facramento prout moris est, ex tunc ea faceret & conservaret qua ad ossicium viridarii pertinent in soresta pradict. &c.

And by that it appeareth, that the Verderor shall be chosen in the same manner as the Coroner of the County

shall be chosen by the Free-holders of the County.

And if a Coroner or Verderor be discharged of hisoffice D by false suggestion by the Kings writ directed to the Sheriff, then the party may come into the Chancery, and require a Commission to enquire of the said salse suggestion, and to return the enquiry before the King into the Chancery; or the Justices of the Forrest may certifie the King of the salse suggestion under their seals; and if it be found to be false, then the King may make a Superstedes to the Sheriff, that he do not remove the Verderors; if, &c. And if he be removed that he suffer him to exercise his office as he did before, and

the Writ is such:

Rex Vic. &c. Licet nobis sugg. in cancellar nostra, quod A unus viridariorum in foresta nostra de S, non babuit terras seu tenementa instra limites foreste prædiët. nec instra forestam præd. morabatur: Tibi præcip. quod si ita est, tunc in pleno com. uo de assense juida. com. loco prædiét. A eligi jaceres unum alium viridar, qui præssit. sacramento, prout moris est, extunc ea fac. & conserv. que ad ossic. virid. pertin. in soresta præd. qui a tamé testissicat. est, coram nobis in canc. nostra per dilect. & sidel. I

de S, Juftic.foreftæ nostr. ultra Trentam, quod idem A terr.& tenementa habet Sufficient. infra foreftam prædict. & idon. & Sufficiens existit pro officio supradict. Nos nolentes ipsum A ab offic. illo occasione hujus falfa sugg. amoveri: Tibi pracip. quod execut. brevis noftri præd.occasione falfæjugg. præd. tibi direct. Superfed. omnino, o præfat. A offic. illud. exercere permittas, ficat bactenus fieri consuevit. Tefte, Oc.

Writ for the Election of the Clark to take Obligation upon Statutes Merchant.

He Writ for the Election of the Clark affigned to take and make Obligation thereof by Statute Merchant lieth where the Clark who is affigned to take fuch Obligation, dwelleth in another place, or is bufied in other affairs that he cannot intend or follow the Office, or that he hath not sufficient lands, &c. to answer for his misdoings, then upon a Surmise made in the Chancery, such Writ shall be [165] made directed unto the Mayor or Bayliff to discharge him,

and to choose another : and the Writ is such, viz.

Rex ballivis & probis hominibus vill.de H falutem. Quia ex relatu accepimus plurimorum qd. B, qui custod. majoris peciæ figilli juxta formam Statuti de Acton Burnell in villa præd. accipiend. deputat. jam habet, in villa præd.moram non facit per qd.ad ea que ad officium fuum pertin. in hac parte faciend. intendere non potest, in mercatorum & aliorum ad dist. vill. con-Auent. dispend. non modic. & gravamen: Vobis mandamus, qd. si ita est, tunc loco ipsius R eligi fac.unum aliu homin.de vill.pd. qui ad illam cuftod. pertin. faciend. melius sciat & posit intendere, & nos de nomine illius quem sic elegeritis, communi figill.vestra distincte & aperte fine dilatione reddatis certiores, boc breve nobis remittentes, Tefte, &c.

And it appeareth by the Statute de Mercatoribus, That the King shall make the Clark, and by it appeareth, That the Mayor or Bayliffs shall choose the Clark, &c. but it feemeth that Writ is granted ex gratia Regis. For he might fend a Writ of discharge unto the Clark, and make a new

Clark (as it feemeth) at his pleafure.

20 E.3.15.

## Writ de non ponendis in Assis & Juratis.

THe Writ de non ponendis in Assisis & Juratis is grounded A upon the Statute of Westmin. 2. cap. 38. and upon the Statute of Articuli super Chartas, cap. 9. which Statutes declare what persons the Sheriff ought for to empannel, and what number he ought to empannel in Juries and Inquests, Knights in a and the Writs declare the Eeffects of the Statutes; and the Writ shall be fuch:

One was chosen by 4 Writ of Right upon the Grand Affife, and after he fhewed a Charter of Exception it was not allowed, the fame fuit in Attaint.

Rex Vic. &c. Cum inter cateros Articulos, quos dominus E quond. Rex Angl. &c. ad emendand. status populi regni sui ordinavit, concessum sit, quod nullus Vic. vel ballivus ponat in inquisition.nec jurat. plures homines, nec alios; nec alio modo quam ordinat. est per statutum, & quod ponant in inquisitionibus & juratis hujusmodi homines magis propinquos, magis suffide non ponen- cient. & minus suspectos : Et qui secus fecerit, & inde convict. dis, &c. and fuerit, reddat querenti damna sua in duplum, & sit in gravi mia mostra: Tibi præcipimus, quod in jurata 24 Militum quam H. T de K arrainavit coram, &c. per breve nostrum versus W. F ad convincend. juratores aff. nove diffeifine, que inter ipfum W, & praf. H. T, & alios in brevi nostro originali content. sum. fuit & capta apud E, per breve nostrum coram nobis de tenementis in C homines vicinit. illius magis propinques, magis suffic. & minus suspect. per quos rei veritas melius sciri poterit & inquiri, poni fac. juxta formam articulorum præd. & hoc nullatenus omittas.

And by this Writ it appeareth; When a man fueth an B Affise or Attaint, or such actions, in which are Jurors at the first day, &c. That he may also sue this Writ directed to the Sheriff, that he return the pannel according to the Statute; And if the Sheriff do not accordingly, then it C feemeth the party shall have an Attachment against the Sheriff. And this Writ may be fued as well by the Defendant as by the plaintiff or demandant, and also although that the party do not fue forth the Writ, yet if the Sheriff or Bayliff of the liberty return a pannel against the form of the Statute, the party defendant or plaintiff may have an action upon the Statute against the Sheriff, &c. because the Statute is a Prohibition in it felf; and the form of the

Writ of Attachment upon the same is such:

Rex Coronatoribus fuis in Com. Linc. &c. Ponite per vadios, . B. Vic. nostrum com. prædict. quod sit oftensur. quare cum inter cæteros articulos, &c. (usque ibi,) in gravi misericord. noftra, & nos nuper ad profecutionem H afferentis quandam inquisiinquisitionem capi deber. coram Justic. nostris præd. de loquela, quæ suit coram eisdem Justic. per breve nostrum int. R petentem & T; tenentem de manerio de S cum pertin. præcepimus præsat. Vic. quod in inquisic. illa homines magis propinquo, magis susficient. & minus suspectos poneret, juxta sormam statuti à articulorum præd. idem Vic. in eadem inquisitione homines magis remotos, minus suffic. & magis suspectos posuit, contra formam evoundem statuti & articulorum, ac contra tenorem mandati nostri præd. ut dic. & habeas, &c.

And by the Statute of welt.2. aforefaid, The Sheriff ought not to empannel men who are fick or decrepit, nor men who at the time of the Summons were not dwelling within the County, nor men above the age of Threefcore and ten years, &c. and if he do, then he, or those who are empannel d by the Sheriff may sue this Writ unto the Sheriff commanding him that he do not empannel them, &c.

And Barons who are Lords shall not be empannelled upon 48 E.3.30. Inquests nor Assies, if their presence be not necessary, 27 H.8.22 but they shall have a Writ unto the Sheriff to discharge

them, thus:

Rex Vic. &c. quia Barones regni nostri in Assiss, juratis, sen recognitionibus aliquibus poni consuever. ut dicunt, nise eorum sacramentum adeo set necessarium, quod sen illis veritas inquiri non possit: Tibi pracipimus, quod disectum & sedem nostrum A in assiss, juratis seu recognitionibus aliquibus non ponas seu poni facias contra voluntatim suam, sene mandato nostro speciali, nis sua presenc. ob aliquam causam specialiter exigatur. Teste, &c.

But if the Sheriff hath returned any Lord in Juries or Colle Affiles, &c. then he ought to bring a Writ unto the Justices, reciting that he is a Peer of the Realm, commanding them for to discharge him, otherwise he shall be sworn, and first he do not appear, he shall lose issue, &c.

There are also other Writs for those who are fick, or past 70 years of age, or those who are not dwelling in the County, and the Writ is such:

Rex Vic', &c. Cum de com.confilid, &c. provisum st, quod bomines perpetuo languidi, vel sic, Quod homines tempor. sum. vic. in patria non commorantes, vel sic, Quod homines ætatem 245 lxx. annorum exceden. non ponantur in assistatio, sec. Tibi præcipimus, quod si A sit perpetuo languidus, vel sic, etatem lxx. annorum excedens, vel in tempore sum. tuæ in balliva tua, vul com. tuo moram non secerit tunc ipsus, &c. in assista, juratis, seu recognitionis un assistation ponas, seu poni faciar contra formam provisionis præd. Teste, &c.

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Clerks

Writ de non ponendis

Clerks who have Lands or Tenements by descent or B purchase may be put and sworn in Assises and Inquests as paywell as other Lay-persons, as appeareth by the Register. and it seemeth the Law is such. But if such Clerk be in the Kings service, he shall have a special Writ for to discharge him, and the Writ is fuch:

Rex Vic', &c. Quia Magistr. R Clericus in obsequio nostro. vel in obsequio venerabilis Patris I. Eliens. Episc. his diebus moram fac. continuam, ut dicitur: Tibi precipimus, quod ipsum Roecasione terrarum & tenementor.que tenet in comitat.predict. in affifis, juratis, feu recognic. aliquibus non ponas feu poni fac. quamdin in obsequio nostro, vel ejusdem Episc. moram facit supradict. Tefte, &c.

And by the Writ it appeareth, that a Clerk shall be put and returned in Pannels and Juries, if he be not in the fervice of the King, or other person for whom the King will write to the Sheriff, that he do not empannel him,&c. But if the Sheriff do empannel and return fuch Clerks, they ought for to appear, otherwise they shall lose issues, and they have no remedy if they have not fuch Writ as before.

And if the Sheriff do empannel, or return them in Juries C after fuch Writ directed unto him, then, as it feemeth, They

shall have Attachment against the Sheriff, &c.

But if the Sheriff do return men who are dwelling in D other Counties, or past 70 years of age, or those who are fick, then they shall have an Action upon the Statute against the Sheriff, although they have not fued forth such Writ directed to the Sheriff, because the Statute is a Prohibition to him, that he return not such persons, and, it feemeth, the Sheriff is bounden to take notice of the Statute at his peril; tamen quere.

And if the Sheriff do return any pannel men who are not sufficient to pass in the Action of Lands and Tenements, &c. then the Juror may have an Action upon the Statute;

which is fuch:

Rex Vic', &c. Cum ad communem utilitatem populi regni nostri de commu. consilio ejus dem regn. statutum set , Ne quis ponatur in All. juratis seu recognitionibus aliquibus, nisi habeat terras aut tenementa ad valenc. xl s. per annum ad minus, ita tamen quod coram Justic. itinerant. ad communia placita in itineribus suis, & etiam in assis, juratis seu recogn. quod civitatibus burg. & aliis villis mercatoribus emiserint faciend. fiat prout bactenus fieri consuevit: Tibi pracipimus, quod fi A terras vel tenementa ad valenc. tanti per annum non babeat,

tunc

tunc ipfum A in affifis, juratis, feu recogn. non ponas feu poni

facias contra formam Statuti, &c.

And if the Sheriff do the contrary,&c. he shall have an Attachment against the Sheriff. And by the Statute the Sheriff ought not to empannel any Juries to try any matter which shall be tried out of the County, if they may not expend 5 l. by the year, &c. And if he do, the party shall have an Action upon the Statute of 21 E.1.de ponendis in Assists of juratis.

And if the Sheriff return on any pannel men who dwell within ancient Demesn for their lands within ancient Demesn, then they may have a Writ against the Sheriff, that

he do not return them: and the Writ is such:

Rex Vic. Cum secundum legem & consuetudinem regni nostri hactenus obtentam & approbatam, homines & tenentes de maneriis que sunt de antiquo dominico Corone Angl. pro terris & tenementis que tenent de codem dominico in aff. jurat. seu recogn. aliquibus poni non debeant, nisi tantum in his quæ in Cur. bujusmodi Maner. debeant fieri : Tibi præcipimus, quod homines & tenentes nostros de manerio nostro de I, quod est de antique dominico Coronæ Angl. ut dic. pro terris & tenementis que tenent de codem manerio, in affifis, juratis, seu recognic. aliquibus extra Cur. maneriorum predict. non ponas, seu poni facias contra legem & consuetud. predict. nist terras & tenementa de alia tenura teneant, per quam secundum formam Statuti de communi consilio regni nostri inde provisi, in assiguratis, Seu recogn. poni debeant, & districtionem si quam eisdem hominibus & tenentibus nostris occasione prædict feceris, fine dilationerelaxes eifdem, Tefte,&c.

And by that Writ appeareth, That all the Tenants may fue the Writ, as they may fue forth a Monstraverunt; and if the Sheriff do contrary to the Wrig, they shall have an Attachment against him, and any of the Tenants may sue the Writ in his own name if he will; and then the Writ

shall be fuch:

Rex Vic. &c. (ut sup. ufque,) Tibi pracipimus, quod A tenentem, Vel fic: A & B tenentes de manerio de M, quod eft

de antiquo dominico, &c. ut suprà.

And although that the Mannor be not in the Kings hands: yet the Tenants shall have the Writ against the Sheriff if he empannel them, &c. And also they shall have the same Writ against the Bayliss of the Liberty who have retorn of Writ, if they retorn any of the Tenants who hold of a Mannor which is ancient Demesn, for Jaries, Assises, or Inquests, &c. Ff ?

Writ upon the Statute of 23 Ed.3.

Corones he And also the Sheriff ought not to retorn Coroners in may put on Assistance, Juries, or Inquests, nor Verderors, nor Foresters, nor ye has a Try-other Officers of the Forest, and they may have a Writ for out a pair p to discharge them; and the Writ shall be such:

Rex Vic. &c. Quia A unus Coron' nostrorum com. tui ad ea quæ ad ossicium coron. pertin. in eodem com. exercend. intendere non potest, si in ass. juratis, seu recogn. aliquibus ext. eundem com. ponat. Tibi præcip. qd. si ita est, tunc A in ass. jurat. seu recogn. aliquibus extra com. tuum non ponas seu poni sac. quo

minus officio intend. possit supradict.

And by that it appeareth, That the Sheriff may return the Coroner to enquire of affairs in the County before Commissioners or Justices of the Peace. But upon actions sued in the Common Pleas, or Kings Bench, they shall not be returned in any pannel. And for Verderors or Forresters,

or other Officers, the Writ is fuch:

Rex Vic. &c. Cum Dom. Edw. quondam Rex Angl. progenitor nost. per literas suas patent. concessit pro se & hæred. suis quod jorest viridar. aut alii ministri sorest sua non ponant in assistatis seu recogn. aliquibus extra forest mostr. de S existat, aut forest ar. &c. tum issum the suis noster forest mostr. de S existat, aut forest ar. &c. tum issum H in Assistant seu recogn. aliquib. extra forestam illam capiend. non ponas seu poni fac. juxta form. provisionis predict. ut district. si quam, Vcl sic: Quia unus viridar. nostrorum forestæ nostr. de S. in com tuo, ad ea quæ ad offic. viridar. pertinent. in eadem foresta exercend. intendere non potest, si in ass. &c. ponatur extra sorestam præd. Tibi præcipimus, ut supra.

### Writ upon the Statute of 23 Ed. 3.

IF a man do retain my Servant being in my service, for E which the Servant departeth from me, &c. and goeth to serve the other, I shall have an action against him who retained him, and against the Servant upon the Statute of 23 Ed. 3. And the Writ shall be attachment against them because the Statute is a Prohibition to them, that they shall

not do fo; and the form of the Writis such:

Rex Vic', &c. Si A fecerit, &c. tunc attachias I de B, ita qd. cum habeas coram Justic. nostris, &c. ad respond. tam nobis quam prefat. A, quare cum per nos & consil. nostrum pro communi utilit. regni nostri ordinat. st. Quod si aliquis messor, falcator, aut alius operar, vel serviens cujuscunque status seu condit. suevit in servitio alicujus retent. ante snem termini concordat. à disto servitio sine causa rationabili vel licentia recesseri

pen.3

pen. imprisonamenti subeat. & nullus sub eadem pæna talem in servitio suo reciper. vel retiner.præsumat : Nec ullus vadia,liberationes, merced. seu salaria majora quam solita sunt præstar. anno regni Regis E.3. progenitor. noftri 20 vel annis communibus quinque vel fex proxim. precedentibus, alicui fervienti folvat vel solvere permittat sub pæna duplillius quod sic solutum aut promiss. suerit illi qui ex hoc senserit se gravat. applicand. præd. LR de C; nuper servient. præd. A in servit. suo apud B retent. qui ab eodem fervit. ante finem termini inter eos concord. fact. Cibi præmiss. per ipsum 1 de salar. plus solit. recipiend. fine causa rationabili & licenc. præfat. A recessit,in servic. ipsius I quanquam ipse de præf. R, eidem A restituend. requisitus fuerit, admisit, & retinuit, in nostri contemptum, & ipsius A grave damnum, & contra form. ordination. præd. attachias etiam præf. R,ita qd.cum babeastunc ibid.ad respond.tam nobis quam pref. A, quare A servit.ejusd. A fine causa rationabil. & licentia sua, ut præd'eft recessit in nostri contempt. & ipsius A grave damnum, & contra ordinationem præd. & habeas ibi hoc breve, Tefte, &c.

And if a man be required to ferve, and hath not Lands nor Tenements to live upon, nor other Art or Trade, and he refuseth to ferve, then he who requireth him to ferve

shall have this Writ:

Rex Vic. &c. Si W, &c. tunc attachias R, ita quad eum habeas coram Justic. nostris, &c. ad respondend tam nobis quam pref. W, quare cumper nos & confil. nostrum pro communi, &c. (utsupra usque ibi)ordinat.sit, quod quilibet homo & famina dicti regni nostri, cujuscunque conditionis fuerit libera vel servilis potens in corpore, or infra ætatem sexaginta annorum, non vivens mercatura, nec certum exercens artificium, nec habens de suo proprio unde vivere possit, nec terram propriam circa cujus culturam se poterit occupare, & alteri non serviens, si de serviend. inservitio congruo considerato statu suo fuerit requisitus, servire teneaturilli qui primo duxerit requirend. & percipiat duntaxat vadia liberation. mercedes, seu salaria quæ in locis ubi servire debeat consueta sunt præstari, Anno regni Regis Ed. 3. 20. vel annis communibus quinque vel fex praced. Et si talis vir vel mulier sic de serviendo requisitus hoc facere noluerit, statim capiatur & mittatur proximæ gaolæ, & ibidem sub ar & a moretur custod. quousque securit. invener. de serviend. in forma prædict. idem R de conditione hujusmodi existens præfat W, quanquam ipse ad serviend. eidem W pro salario statui suo competenti dictis annis communibus præcedent.conf. Sepius requisit. fuerit, penitus servir recuj. in nostri contemptum, & ipsius W grave damnum, & contra formam ordination. prædict. & habeas, &c. Tefte, Oc.

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And if the Servant be retained in Winter to serve, and A after he will depart from his Master in the Summer, and serve in another place, then he whom he served in Winter, shall have a Writto compel him to serve him in the Sum-

mer, which is fuch:

Rex Vic. &c. Si W de C, &c. tunc pone I de S, quod fit, &c. advespond. tam nobis quam præf. VV de G, quare cum per nos & consil. nostrum pro communi utilitate regni nostri statssit, quod nullus serviens cujuscung; stat surit seu conditionis extra villum, ubi moratur in Hyeme ad serviendum alibi in æstate, servitium in eadem villa invenire possit sub pæna imprisonament; eveat, excepto quod bomines in comicatu Stass. Lanc. & Darb. & de March. Walliæ tempore Augusti ad laborandum in aliis com. venir. & salvo, prout bactenus sacer. consuever. redire possit, præfat. I in servitio ipsus W apud F in Hyeme nuper retentus, predist. W seu aliqui alii in villa predist. quanquam ipse ad serviend. in eadem villa pro salavio competenti sepius requisitus fuerit servire recusavit, in nostri contemptum, & ipsius W grave damnum, ut contra sormam Statuti præd. & habeas ibi nomina ples. & hoc breve. Teste, &c.

The Lords of Dowers, or Justices of Peace, may commit B Vagrants to prison, if they will not serve, and they may command the Gaoler to set him at liberty, without any other

Writ.

And if a man be retained in Service, and go wandring C abroad out of his Service, another man may compel him to

ferve him,&c. because he is out of Service.

And so if a man do retain anothers Servant, not knowing that he was in the service of the other, he shall not be punished for so doing, if he do not retain him after notice of his first Service.

An Infant of 12 years of age shall be bound by his Co- D

venant to serve in Husbandry.

A Woman of fuch age shall be also bound to serve in

Husbandry by her Covenant.

If a man take an Infant or other out of anothers service, he shall be punished, although the Infant or other were not retained.

An Infant by his Covenant shall be bounden to serve in Husbandry, although he may spend 40 s. or 12 Marks by

the year.

And so a Gentleman by his Covenant shall be bound to E serve, although he were not compellable to serve. For if a Gentleman, or Chaplain, or Carpenter, or such which shall not be compelled to serve, &c. yet if they covenant to serve they

they shall be bound by their Covenant, and an action will lie against them for departing from their service.

And if a man do retain one to ferve him for 40 daies, and another doth afterwards retain him to ferve him for a year, the first Covenant is avoided, because the Retainer was not according to the Statute.

And so if a man be retained to serve at every time he shall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed; and without Deed it is

void.

G And a man shall not have an action against an Apprentice

upon his departure, upon the Statute.

H And if a mando retain one to ferve him, and doth not express for how long he shall serve him, he shall serve him for a year: for that Retainer is according to the Statute.

If a mare who is not to have any Servant, do retain one to

ferve him,&c. the Retainer is void.

I He who hath not fufficient Lands of his own to occupy, fhall be compelled to ferve.

And a man may retain one for two or three years, and it

is good.

And keeping from the Servant meat and drink, is a good cause for his departure from his service.

And fofor Battery, or License to depart, is a good cause of departure.

M The Lord may take his Villain out of the service of another, if he hath need of Servants, otherwise not.

If a woman who is a fervant doth marry, yet it feemeth

The ought for to ferve.

O If the husband and wife be retained in fervice during their marriage, &c. if they depart from their fervice, an A-dion upon the Statute lieth against them.

If the fervant be drawn away, the mafter may re-appre-

hend him, and keep him in spight of him.

Q If the Mafters wife do beat the Servant, it is good cause for the Servant to depart and leave his service.

## Writ de restitutione temporalium.

THe Writ of Restitution of the Temporalties lieth, in case a spiritual person be elected a Bishop, and consecrated,&c. Then he shall have the Writ unto the Escheator,&c. And fo is it of an Abbot or Prior, which is of the Kings foundation, and ought to have the Kings Royal affent, &c. when he is elected and established Abbot or Prior, he ought to fue a Writ to be restored unto the Temporalties; and the form of the Writ for the Prior is fuch:

Rex Escheatori suo in Com. Devon. sal. Cum venerabil. pat. A H. Exon. Epifc. electionem nup. fact. in Eccles. conventuali de P, de dilecto nobis in Christ. fratre I de C canonico ejusdem dom. in Prior. loci illius, cui prius regium affenf. adhibuimus & favorem, confirmaverit, sicut per literas patentes ipsius Episcopi nobis inde directas constat : Nos confirmationem illam acceptantes, cepimus fidelitatem ipfius Electi, & temporalia prioratus prædict. (prout moris eft) restituimus eidem. Et ideo tibi pracipimus, quod eidem Electo temporalia prioratus pradict. liberes in forma prædict.

And by that Writappeareth, when a Priory or Abbey is B void which is of the Kings foundation, that they ought for to have the Kings royal affent to go to the Election; and after the Election made, the Bishop ought to confirm the Election, and to certifie the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this

Writ to restore the Temporalities.

And there is another Writ when the King granted only his allent to go to the Election, and to make the Prior without any certificate made before of the Election; and the

Writ is fuch:

Rex, oc. Cum venerabilis pater, oc. dilectum nobis in Christo fratrem C de D, Canonicumejusdem domus in Priore loci illius elect.cui electioni prius regium affensum adhibuimus & favore, in Priorem ejufdem loci profecerit & paftorem, ficut per literas patentes ipfins Episc. nobis inde direct. nobis conftat, nos prafectionem illam acceptantes, cepimus fidelitatem ipsius præfecti & temporalia Prioratus præd', &c. ut supra.

And the Prior so elected and established, may have a C Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord,&c.

and that they be attendants,&c.

And where the Prior or Abbot ought to have the Kings D Royal affent, to go to Election, and obtain the same, and afterwards

afterwards make the Election, and the Bishop doth avoid it, and afterwards they submit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, &c. And make him Prior, and certifiethe King thereof by his Letters, The King thereupon may grant such Writ, viz.

Rex, &c. Cum Venerabilis pater I.Wint. Epijc. Elect.nuper fact. in Eccles. D., juxta S de dilecto nobis in Christo fratre T de N, Canonico ejujdem Domus in Priorem loci illius caujavit: & virtute submissionis conventus loci prad. sibi fact. de proviendend. eidem Prioratui de Prior. idoneo illa vice, dilect. nobis in Christo fratrem I de W, Canonicum ejusdem Prioratus in Priorem loci illus præsecerit & pastorem sicut per literas patentes ipsus Episc. nobis inde direct. nobis constat, nos cum eodem I volent. agere gratiose, ceperimus sidelitatem dicti I & temporal. Prior. illius prout moris est, restituimus eid. Et ideo tibi præcip. &c. ut supra.

And by that Writ appeareth, That the Writ is of the Kings special grace; for the King might lawfully refuse the establishment of the Prior, because he was not elected according to the Kings License and assert to the same, &c. But yet the common use is, That if they cannot agree in the Election to submit themselves unto the award of the

Ordinary.

And there is another form of writ where the King grants his Royal affent to any Chapter to choose the Bilhop; and they choose one of the Chapter, and because the Archbi-hoprick is void, the Guardian of the Spiritualties doth certifie that Election unto the King, and his Confirmation upon the same; and upon that the King grants a Writ of

Restitution,&c. in such form.

Rex, &c. Cum dilect. nobis in Christo Prior & Capitulum Eccles. Christi Cant. Custod. spiritualitat. Archiepiscop. Cant. sede vacante, electionem nuper celebrat. in Eccles. Cathed. movend. de discreto viro magistro H de H. Archidiacono induend. & Canonico ejustem Eccles. in Episc. loci illius, cui prius Regium affensum adhibuimus & favorem confirm. sicut per literas patent. ipsorum prioris & capituli nobis inde directis nobis constat, nos confirmationem, &c. ut supra.

And before the Statute of Premunite, The King might feife the Temporalties of the Bishop, if he came to the same by Provision of the Pope; but now he shall forfeit all

his Lands and Goods by the Statute of 16 R.2.

G And it appeareth by the Register, if a Bishoprick of Isteland be void, that they shall sue to the King here in Eugland to go to Election of another, and after the Election made.

made, they ought to have his Royal affent to that Elections upon Certificate of the Election to the King. And thereupon a Writ shall be out of the Chancery here to the chief Justice of Ireland, or his Lieutenant, rehearing the whole matter, commanding him to take the Bishops Fealty, and to restore to him the Temporalties; but now the course in Ireland is to make such Writs there in the Kings name, but the King doth nominate the Eishops there, and also in England; and then the Chapter shall choose him whom the King hath nominated unto them; and thereupon the Writs are made of course.

But how and in what manner Archbishops and Eishops & shall be elected, nominated, presented, invested and consecrated unto the dignity of an Archbishoprick or Eishoprick;

See the Statute thereof made, 25 H.8.cap.20:

And the King may give power to another, to give his Baffent to go unto the Election, and to certifie the same Election unto him again, and thereupon to take the Fealty of the Abbot, Prior or Bishop, and to certifie the King thereof in the Chancery. And the Writ of Dedimus potestatem shall be such:

Rex dilecto suo I de C constabulario suo castri sui de A. B fal. Compatientes paupertati dilectarum nobis in Christo supprioressa & monialium Priorat. de B vacantis per mortem bona memoria M nuper Prioreffa loci illius, cui licentiam nuper concessimus eligend.ac volentes ipsarum laborious & expens.parcere. gratiose dedimus tibi potestatem prabend. affensum regium vice nostra electioni de futura Prioressa in dicta Ecclesia facta seu in proximis faciend. Et cum electio hujusmedi per literas patentes ipfarum supprioresse monialium cum figillo capituli sui fignatas nobis inde directas, tibi fuerit prafentata ad bujufmodi affensum loci Diocesano per vestr. literas significand. ut quod fuum eft ulterius exequatur, nec non recipiend. fidelitat. nomine nostro ejustem Prioresse, si contingat electionem præd. Canonicæ confirmari, & tibi inde per literas patentes ipfius Diocefani nobis inde directas constiterit, & ideo tibi mandamus, quod circa pramissa facias in forma prad. o nos de sidelitate prad. cum illam ceperis sub sigillo vestro distincte & aperte reddas certiores, mittent. nobis tam literas ipfarum supprioressa & monialium, quam literas ipfius Diocefani supradia. Tefte, &c. ut fupra.

And if the Deanand Chapter go to the Election of the C Bishop without the Kings affent, and certifie the same to the King, The King may choose whether he will assent to the election or not; And if he will give his Royal affent to the same, Then he shall send a special Writ to some person to take the Fealty of him; and the Writ in the

Register is such:

Rex dile 80 & fideli suo I Justic. Suo Hibern. Salutem. Cum dilecti nobis in Christo Decanus & capitulum Ecclef. de B vacan. nuper Ecclesia sua prædict' per mortem bone memor. Lucz nuper Episc. loci illius dilect. nobis in Christo M. I Decanum Eccles. prædict.in fuum Episcopum elegerunt & pastorem, & nobis per suas patentes literas supplicaverunt, ut Electioni regium affensum adhibere dignaremur : Nos licet idem Decanus ig Capitulum prius à nobis Eligend. licen. non postulaverint, ut est moris, volentes tamen eis hac vice grati. facere fecialem, eidem Electioni Regium affensum duxerimus adhibend. Nolentes, quod quamvis ipfi hujusmodi licentiam minime postulaver.molestentur in aliquo feu graventur : Volentes insuper, eid. Electo,ut ipfius precat. laboribus & expenf. grac. fac. uberiorem: vobis dedimus potestatem, quod si contingat Election. homini per loci metropolitan. Canonic. confirmari, & vobis inde per literas patent. loci ipfius Metropolitanus nobis inde direst. constiterit, tune fidelitat. ipfius Electi nobis debitam in bac parte nostro nomine recipiatis, & ei temporalia Episcopatus illius prout moris est restit. faciatis vice nostra, receptis prius ab Episcopo Elect. literis suis factis sigillo suo &c. & sigillo capit. sui signatis, quod gratia nostra, quam eidem Electo ad præsent.ex mera liberalitate nostra fecimus, nobis vel hæredibus nostris non cedat, &c. Teste, O.C.

License to go to Election.

The form of the Kings License to go to Election is

Rex dilectis sibi in Christo Priori & Conventui Monaster. de Burg. S. Petri sal. Ex parte vestra nobis est humilit. supplicatu, but cum Ecclesia vestra praed. per mort. bon. memoria W ultimi. Abbatis loci illius pastoris sit solatio destituta, alium vobis eligendi in Abbatem & Pastorem ejusdem domus licentiam vobis concedere dignaremur, nos precibus vestris in hact arte savorabiliter inclinati, licentiam illam vobis tenore præsen. duximus concedend.mandantes quod talem vobis eligatis in Abbatem & Pastorem, qui Deo devotus, Eccles vestr. præd. necessarius, nobique & Regno nostro utilis & sidelis existat. In cujus rei, &c.

And when they have made their Election, they ought to fue a Writ to have the Kings Royal affent to that Election, and that affent shall be made by Writ, directed to the Bishop

of the Diocess, and shall be such:

is Hopeo.

95.

41 E.3.5.

## Writ of Decies tantum.

Rex Venerabili in Christo Patri R. eademgratia Epif. Linc. falut, Sciatis quod Electioni nuper fac. in Eccles. conventuali Monasterii de Bvestræ Dioces, vacan. per mortem bonæ memor. W, ultim. Abbatis loci illius de M supprior. ejusdem domus ved de fratre B, Monacho ejusdem, dominus in Abbatem loci illius Regium assensia adbibuimus & favorem, & hoc vobis tenore præfen. se nificanus, ut quod vestrum est in hac parte exequamini.

And the Abbot when he is made Abbot, may sue letters patents, directed to his Tenants, reciting how he is made Abbot and how the King hath restored to him the temporalties, commanding them that they be attendant upon him

as their Lord.

#### Writ of Decies tantum.

The Writ of Decies tantum lieth, where any of the Jury who is sworn, taketh of the one party, or of the other, a second or of both, to give their Verdict, &c. Then he who will may sue this Writ, for it is an action popular. And the Writ of Decies tantum lieth against all the Jurors, although they of he Partie severally take sums of mony, as some more, some less. is not good against the King. 40 E.3.33. 44 E.3.36. 36 H.62.8.

And Decies tantum lieth against an Embraceor, if he take mony, as well as against a Juror, otherwise not.

his companions to pass with the one, or the other, because he is perswaded in Conscience with him.

And an Embraceor is he who cometh to the bar with the B Party, and talketh in the caule, or flandeth there to survey the Jury, &c. or to put them in fear: but Lawyers may plead in the cause for their Fees, but they cannot labour the Jury, and if they take monies to do so, they are Embraceors.

And the Decres tantum doth not lie against the Embraceor C if he embrace and take no mony: for he ought to take mony, and also embrace, if the action be maintained.

And Decies tantum lieth against the Jurors, although they do not give a Verdict, if they take mony: and so if they although they give a true Verdict, a Decies tantum lieth if they take mony.

And a Decies tantum may be fued against the Justices of Nist prius by bill, and it may be adjourned from them in Banco. E And the form of the Writ is such:

Rex

Rex Just. suis de Banco sal. Cum in Statuto nostro apud W. Certain Ju-'an regni nostri v. edit. inter alia ordinat. fit & flatut. quod fi rors took an regns nostre veast there also indended by the aliquis jurator in assurance vel inquisit. capiat de una parte vel mony of the de alia of super hoc debit. convinc. qd. extuno non ponat. in ass. their verjuratis, nec inquifit. & nihilom. committat. prifon. & ulterius dict, withredimat. ad voluntat. nostr. at S & W, nuper in quadam inquisit. out any Cointer A petent. & R tenent. de uno mesuag. cum pertin. in N venant made coram vobis in banco prædict. capiend. positi, tam de præd. A before, viz. quam de præfat. R contra formam Statuti præd.ceper.ut accepim. each amark Nos statut. illud inviolabiliter volent. observari, vobis manda- thereof conmus, quod vocatis coram vobis praf. W & S, si vobis constar. vict by Verpoterit ipfos in inquifit.præd.pofitos fuiffe, tam de prædict. A dict, and fiquam de præfat. R cepiffe, ut predict.eft, tunc inspecto Statuto ned each a prædict. ulterius inde faciatis quod de jure & secundum formam Mark, so note Statuti præd. fuerit faciend. Tefte, &c. the Statute,

that is out of

and there was no committing to prison, 39 Aff. 19. Brion. Decies tantum, 15.8 H.6. 9,8 10. Not guilty is no plea in Decies tantum : but he ought to fay that he took no mony. 6 E.45. For in a Writ of Maintenance he must say he did not maintain.

And upon this Writ the Justices shall make Process for the King against the party, which Writ shall be a Pone (as feems) to attach him to appear, and to answer the King for the fame: and there is another form of Writ for the party thus:

Rex Vic. &c. Si W.H fecerit, &c. tune pone, &c. I.S. I.F, & W.K. &c. quod fint coram nobis à die S. Michael. in tres septimanas ubicunque tunc fuerimus in Angl. adresp. tam nobis quam præf. VV.H, quare cum in Parliament. Domin. Ed. nuper Regis Anglia, &c. apud Westen. anno regni sui tricesimo octavo tento, inter alia concordatum existat, quod se aliqui juratores in Affifis, juratis & aliis inquisitionibus capiend. inter nos & partem, vel partem, & partem, quicquam capiant per ipfos vel per alios de parte conquerentis vel defendentis pro veredicto suo dicendo, & super hoc per processum in quodam articulo de Juratoribus anno regni ejusdem avi nostri tricesimo quarto facto ordinat. convincat. five fit ad fectam partis que pro feipfo. vel pro nobis, aut alterius cujuscunque personæ prosequi voluerit, folvat quilibet juratorum prædit. decies tantum quantum ipfe recipit, & habeat ille qui faciet fectam, unam medietat. & nos aliam medietatem. Et quod omnes imbraciat. ducend. vel procurand. tales inquisit. in patria pro lucro vel proficuo capiend. puniantur eodem modo de forma ficut juratores, & fi jurator vel imbraciator ita convictus, non habeat unde in forma prædict. satisfaciat, habeat prisonam unius anni, prout in ordinatione illa plenius continet.prædict.I.S, I.F & VV.K juratores id quadam inquisit.quæ nuper sum. fuit & capta coram Justic. Domin. Ric.

21 H.6.54. Exception was taken for want of the words (grave damnum, dec.) and difala popular Action.

nuper Regis Anglia fecundi post conquestum, de banco apud Wostm. per breve ipsius nuper Regis de record. inter R. F & præd. W.H de averies ipfius R captis & injuste detentis ut dic. positi, pro verdict. suo in hac parte dicend ac praf. W. D de L.I imbraciatores ejusdem jurat. ad eam ducend. & procurand. de praf. R divers. pecuniar. sum. & alia dona apud villam Weftm. ceperunt, in nostri contemptum, & ipsius H grave damnum, & contra form. ordinationis prad. & habeas ibi nomina plegiorum, lowed, being & hoc breve. And Ambidexter is that Juror or Embraceor, who taketh of one part and the other to restore ten times as much,&c. See Statute 27 E.3.cap.3. 33 E.3.cap.8.38 E. 3.cap. 12.

Writ of Champerty.

47 E 3.9. [172]

He Writ of Champerty lieth, where a man by Cove- A nant or agreement made by writing or by word, agreeeth to have parcel of the thing or land, or debt which is in fuit, that shall be recovered, if he do recover to maintain and aid him in the action, and in the matter for which he fueth. Then he who is grieved shall have this action against him who maintaineth the fuit for the same intent; and the Writ is fuch:

Rex Justic. suis de banco salutem, Cum inter cæteros articulos quos Domin. E nuper Rex Angl. &c. ad 'emendac. status populi regni sui concess. ordinat. sit, quod nullus minift. suus,nec aliquis alius pro parte rei que est in placito habenda, negotia que suns in placit. sibi affumit manutenend. nec aliquis jus sun sub bujusm. convent. alteri dimittat: ac L placit.loquelæ quæ est coram vobis per breve nostrum inter A petent. & B tenent. de uno mes. cum pertinent. in I pro parte ejufdem habend. jam affumpferit manutenend. contra form. ordinat. præd. ut accepim. nos ordinat. illa volent. inviolabil.observ.vobis mandam.qd.inspetto tenor. ordinat.pr.ed.ulterius inde fieri fac. qd. de jure & fecund.form.ordinat.præd. fuerit faciend. Tefte, &c.

And upon that the Justices shall award an Attachment B against the party out of the Common Pleas, &c. returnable

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at a certain day.

And this fuit shall be said the Kings suit: but yet the C party may fue an Original Writ out of the Chancery against him who purchaseth parcel of the Land depending the Plea,&c. And the Statute which giveth the action, is the Statute of Articuli Super Chartas, cap. 11. which willeth that no Minister or other for part of the things which are in Plea, take upon him any matter which is in fuit; nor none upon any fuch Covenant shall give up his Right, and if any do so,

Ley Shat of y 2 32 Holg: fan Eposihon: thereon First gry & 369:

and be attainted thereof, there shall be forfeit unto the King so much of his Lands and Goods of the taker as doth amount unto the value of the part he hath purchased by fuch taking upon him.

And by those words it seemeth that he who leaseth his 30 Aff. 5. Land pendant the fuit, or giveth parcel thereof pendant the Br. Cham-Plea, to the intent aforefaid, shall be punished as well as he perty 7-

who is the purchasor.

Anno 30 E.3. Lib. Aff. It is no Plea, to fay he did not pur- Br. Champ. chase pendant the Plea; by which it seemeth if he purchase 7. Fits 11. before the Writ fued to maintain, &c. that he shall be punished,&c. by the Statute,tamen quære.For 19 R. it is holden Fits Cham. by all the Court, that if a man bargain for any lands by 9 H.7.18.ac. deed, and afterward an action is brought for the same land. deed, and afterward an action is brought for the same land, Plow.Com. and afterwards pendant the Plea he maketh estate to him 465 acc. to whom he made the bargain, that it is not Champerty.

A Surrender made by him in the Reversion pendant the 17 E.2.

Plea, is not Champerty.

And if a man purchase land bona fide pendant the Writ, 50 Aff. 3.Br. Champ. 8. and not to maintain, it is not Champerty.

And a Disseisor in an Affise shall have a Writ of Cham-Br. Cham. 4 perty, if the Differee grant part of the land by Covenant 47 E.3.2.

to maintain,&c.

And a man may give to his Son in Frankmarriage or for Champ. 12. life, and it shall not be said Champerty, for the Statute in the end thereof is in fuch manner. But that is not to be intended, That a man may not give Counsel Fees for their pleading.

And in a Writ of Champerty, 17 E. 2. where the Writ did abate for false Latin; the Defendant was put to answer

the Kings fuit for the fame matter.

And if a man grant a Rent out of the land, pendant the fuit for the land, the fame is Champerty, although that that Rent is not as a demand,&c.

And Champerty lieth as well upon Covenant made by word, &c. as if it were made in writing to have parcel of the

thing,&c.

And if the Covenant be to have a Rent out of the land of another which is not in fuit; it is not Champerty. But if he do maintain, &c. he shall have a Writ of Maintenance against him for the same, but not a Writ of Champerty.

And if the Officers of any Court do maintain any Plea pleaded in their Court to have part of the same or other profit by the recovery in that action, the party grieved shall

have fuch a Writ:

Champ. 14. 22 E.3.10.

6 E. 3.3. Firs

Rex Vic &c. Si R & M uxor ejus fecer. &c. tunc pone, &c.

I & VV ball. civitat nostræ Winton. W & W, qd. sint coram
Justic. &c. ostens, quare cum de communi consel. regni nost. provisum sit, qd. nullus minister noster vel aliquis alius manuteneat
placita, querel. vel negotia, quæ sint in Curiis nostris, vel alibi
de terris & tenementis, aut aliis rebus quibuscunq; pro parte rei
petit vel alio prosicuo, per convent, fac. inde habend. nec aliquis
jus suum sub hussmodi convent. alteri dimittat, pr.ed. I & VV,
VV & VV quoddam placit. friscæ forc. qd. est coram Major. &
dist. ball. civitat. pr.ed. inter S & A uxor. ejus petent. & pr.es.
R & M tenentes de uno mes. cum pertin. in civitat. pr.ed. pro
parte tenementi pr.ed. & alio prosicuo inde habend. per convention. jam assumpserint pro pr.es. S & A manutenendis & manutenent, ad grave damnum ipsorum R & M, & contra form. Stat.
prædist. & babeas, &c.

Writ upon the Statute; That none be Victualler for the time that he is Mayor, or Sheriff, or head-Officer of a Town or Burrough.

Note, that by the Statute of York, no Victualler shall of use the occupation, to sell Victual or Wine in gross or by retayl, so long as he is in Office in any Town, Borough or City, to keep the Affise of Bread and Wine upon forfeiture; &c. If a man who is a Victualler be chosen to be Mayor, Sheriff, or other Officer of a Town, Borough or City, who by reason of his Office is to keep the Assise. By the Statute of 3 H.8. cap.8. it is ordained, that two discreet persons of the same Town,&c. who are not Victuallers, be chosen and sworn to affise the Affise of Bread, Wine, and Victual during the time that he is in his office, and then after the price affelled of Wine and Victual, for the time it shall be lawful for him who is chosen Mayor, or Sheriff to fell wine and victual for the time that he is Officer. But that A Statute doth not extend to London, York, or Coventry to fell or retayl wine or victual, but in gross they may. And by the Statute of 6 R.2. cap.9. That Victuallers be not chosen to the Office of a Judge in Towns or Cities, but for want of others, then he shall not sell victuals upon a pain of forfeiture.

But it appeareth by the Statute of 3 H. 8. what things he

may do.

And if any man in London, York, or Coventry, or other B place offend against those Statutes, then he who is grieved

may fue a Writ directed to the Justices of Assis, commanding them to send for the parties, and to do Right, &c. Or the party grieved may have an Attachment against the Osficer, Mayor, Sheriff, or Bayliff, who offend contrary to the Statute, to appear before the Justices in the Kings Bench, or before the King in the Common Pleas, to answer the matter. And the form of the Writ unto the Justices of Assis such:

Rex dilectis & fidelibus suis A & B, Fustic. ad affisas in com. tali capiend. affign. falutem. Cum ad communem utilitatem populiregni nostri statutum sit, quod nullus minister in civitatibus, nec in burgis, qui ratione officii sui debeat custodire ass. de vinis, seu de victualib. dum sit intendens bujusmodi officio. merchandizet de vinis nec de victualibus in grosso nec in retalliam, Ac jam R de Bnobis dederit intelligi, quod S & M ballivi villa prad. & quidam alii ballivi in dista villa de S existant.qui ratione officii sui hujusmodi assisam custodire debent in eadem villa, vina & victualia in groffo & ad retalliam vendunt, contra formam Statuti præd'. Nos, si ita sit, remedium in hac parte apponi volentes, Vobis mandamus, quod audita inde querela præd. R, & vocatis partibus coram vobis, earumque rationibus hinc inde auditis, & inspecto tengre Statuti præd. eidem R, tam pro nobis quam pro seipso super boc debitam justitiam fieri faciat prout secundum Statutum præd foret faciend. Tefte,&c.

And if the Action be brought upon the Statute of York, then he who fueth the Action shall have the third part, and the King shall have the residue of the Victuals which is forfeited. And also the form of the Writ of Attachment is such:

Rex Vic' Ebor. salutem. Pone, &c. P de T de Richmond. nuper ball. vill. Richmond. quod sit coram nobis, &c. ostens, quare cum ad communem utilitatem regni nostri Anglia de communi consilio ejusdem regni concordat. sit, quod nullus miniser,&c. ad retalliam sub forissactura eorundem, præd.P, dum ball. dittæ villæ de Richmond.extitit, de vinis & aliis vitualibus diversis ad valentiam centum librarum in prædist. villa Richmond. tamin grosso quam in retallia pluries merchandiavit, & ea ibidem vendidit, ut dicitur, in nostri contemptum manisestum, & disti populi nostri grave damnum, ac contra sormam ordinationis supradist. & habeas, &c. Teste, &c.

Writ upon the Statute of Articuli Cleri, that be do not distrain in the Glebe of Parsons; nor in the Kings High-way.

THe Writ that no distress be taken in the Glebe-land of E the Parson by the Sheriff or other Officer is grounded upon the Statute of Articuli Cleri, cap.6. By which Statute it appeareth that the Sheriff, nor other Officer shall not diffrain in the Kings high-way, nor in the Glebes of ancient times given to Rectories, and if any Sheriff or other person do contrary, then he who is distrained may sue this Writ.

Stat. Marlb.

part may

Rescous.

And if a Lay-person be distrained in the Kings high-way, &c he shall have an action upon the Statute of Marlebridge. But a Spiritual person shall have his action upon this Sta-43. Fitz Ref- tute. But by the Statute of Marlebridge the Kings Officers cous 14. the may distrain in the high-way. And after the Writ delivered to the Sheriff, if he be diffrained again he shall have an Alias and Pluries, and thereupon an Attachment. And this Writ is in it self a Prohibition to the Sheriff; and the Writ is fuch:

Rex Vic. sal. Cum in Articulis Pralatorum & Cleri regni nostri per Dom. Edw. nuper Regem Angl. avum nostrum, de affensu procerum & magnatum regni nostri concest. contineatur. quod districtiones non fiant super Rectores per Vic. aut alios ministros nostros in via Regia, aut in feodis quibus olim Eccles. fint dotat. ac jam ex gravi querela dilecti nobis in Christo Abbatis de Valle regali parsonæ Eccl. de K intellexerimus, quod tu colore officii tui terras & tenementa que sunt de dote & feodo ejusdem Escles. apud K nuper ingressus fuisti, & præfatum Abbatem in terris & tenementis pradict. graviter distrinxisti, & inde distringere non desistis, in ipsius Abbatis præjudicium & libertatis Ecclesiasti a lasion. manifestam, & contra formam articulorum prad': Nos libertates ecclesiasticas illasas observare volentes, Tibi pracipimus, quod districtiones aliquas in [174] terris & tenementis que sunt de dote prodict. Eccles. nullatenus facias, nec quiequam quod in libercatis Ecclefiastice lasionem aut enervationem articulorum præd. cedere valeat attemptetis, & districtionem fi quam præfat. Abbati in frod. Eccles. suæ præd. ut predictum eft, feceris, fine dilatione relaxes eidem. Tefte,

And it seemeth, That the party who is distrained in the A Kingshigh-way, or the Parion in the Glebe of his Church thall have an Attachment against the Sheriff, or other who distrained

## Writ upon the Statute of Articuli Cleri, &c. 387

distrained, although they never sued out before this Writof Prohibition to the Sheriff; because that the Statute is a

Prohibition it felf to the Sheriff,&c.

And by the Statute of Articuli Super Chartas, cap. 12. The Sheriff ought not to make excessive diffress for the Kings debt, nor diffrain the plough Cattel if he can find others. And if the party will find Sureties to the Sheriff to pay the Kings debt before the day of the return of the Writ, the Sheriff ought to deliver back the Cattel. And if the Sheriff do otherwise than is expressed in the said Statute. the party upon that Statute shall have Attachment against him, Or he may fue forth a Writ to inhibit the Sheriff that he do not distrain contrary to the form of the Statute, and the Writ is fuch :

Rex Vic. Derb. falutem. Cum inter cæteros articul. quos celebris memoria Dom.Edw.quondam Rex Angl. avus noster, ad emendac. Status populi regni sui ordinavit, contineatur, quod nimis graves district. non capiantur pro debitis nostris, Et & debitor poffit invenire sufficient. fecuritat. pro debit. ill. ufque ad unum diem infra diem Vic. quod district. bujusmodi interim relaxetur : Tibi præcipim. quod fi I de W invener. tibi sufficient. securitat. de respond. nobis ad proxim. proferum tuum de centum solid. per quos finem fec. nobis coram Justic. nostris de banco pro licenc. concord. in uno brevi de conventione, @ quos ab ipfo per fum. Scaccar. noftri exigis, ut dic. tunc diftriffioni quam eidem W facis occasione prædist.interim Superfed. per fesuritatem supradictam, & habeas ibi hoc breve. Tefte, &c.

And there is another form of Writ in such case, thus: Rex Vic. &c. quod minus gravis districtio non capiatur pro debito nostro, nec nimis remot. ducatur. Et si debitor invenire possit sufficient. & competent. securitat. de debito illo usque ad unum diem infra diem Vic. infra quem debitor fibi inde remedium acquirere valeat, vel alias de debito illo satisfact. quod district. hujusmodi interim relaxetur : Tibi præcipimus quod si I de T, quem pro octo solid. nobis solvend. de exitibus suis coram nobis, & alibi coram Justic. nostris forisfact. virtute sum. Scaccarii nostri tibi direct. distringis, ut dic. invenerit tibi sufficient. securitat. juxta formam articulorum præd. pro debito præd. usque ad unum diem infra diem tuum ad quem tu teneris inde computar. tunc districtionem, si quam eidem I occasione præmiss. fieri feceris interim relaxes eidem pro fecuritate supradiela.

Writ for to feife the Land of the Wife which the boldeth in Dower, who marrieth her felf with-

out of use out License. P: 24:

> See after. 263, 264, 265.

Note, That if the Tenant holdeth of the King in Capite C and dieth,&c. his wife ought not to marry her felf again without the License of the King; and if she doth, then the King may feife those Lands which she holdeth in Dower, until the have paid a Fine to the King, which is commonly one years value of the Land which she holdeth in Dower; and that is by the Statute of Prarog. Regis c. 2. But it appears by the Register, That the King ought to seife as well the Land of the Husband, as the Land of the Wife which she holdeth in Dower.

Stamford 9. it is not Law.

And by the same reason, If the wife have other Lands of her own Inheritance, befides the Land which she holdeth in Dower; that the King may seise that Land also; And the Writ in the Register for to seise the Land, is such :

Rex Escheatori suo, Quia Margarita, qua fuit uxor Edmundi Baron. Staff. defuncti, qui de nobis tenuit in capite, fe fine licentia nostra aut diletti & fidelis nostri Radulphi Basset, cui id quod ad nos pertinuit de maritagio præd. concessimus. Thomæ de P maritavit, sicut ex querela ipsius Radulphi accepimus: Vobis mandamus, quod si ita est, tunc omnes terras & tenementa, tam ipfius Thomæ quam prædict. M in balliva vesira fine dilatione cap.in manum nostram, & ea salve custodire fac. donec aliud à nobis inde habueritis in mandatis. Tefte. &c. per conf.

But now by the Statute of 32 H.8. cap.46. the composition is given to the Master with three

And it appeareth by that Writ, that the King may grant p the Marriages of his Widows, as well as of his Wards; and that the woman may agree with him to whom the marriage is granted, and by his affent or License if she marry, it seemeth she shall not pay a Fine. And if she marrieth, without License, then he who marrieth her doth the King of the Wards or his grantee wrong, and that wrong feemeth to be the cause, That the King shall seise the land of him who marof the Coun- rieth the Kings Widow without Licensc.

cil of that Court: So they may taxe a Reasonable Fine at their discretion, according to the Statute of Prareganva Regus, Stamford 19. acc.

> And it appeareth by the Register, That the faid Thomas P. may agree with the faid Ralph Baffet, for which the King

shall receive his seisure; as appeareth, Rotulo Clerum Anno 8 E.2. But yet I conceive That the King ought not to feise but only the Lands which the woman holdeth in Dower, because the Statute giveth no more but that he shall seife that which he holdeth in Dower; for if she will not claim nor sue for Dower, it seemeth she shall not be fined, nor if she get none of her Land seised; And also I conceive, That the Dower at King cannot grant the Marriage of his Widows as he may the hands of do of his Wards; for if the will live fingle and not marry, the heir, or the may fo do and thall not pay any fine. Ideo Quare.

of the Committee with-

out Oath. Quare whether the may marry without Licente. Stamford 19. No, because presently upon the assignment she is Tenant to the King, and not to the Heir. Stamford Prarg. 18. 40 Aff. 36. The Kings Widow had Dower without assignment. Ve Stamford 18.

Writ upon the Statute de Anno primo E.3.c.12, & 13. where the Kings Tenant alieneth without State 2 ar. 2: 124 License.

A Note, where the Kings Tenant who holdeth of the King in chief as of his Crown alieneth the Land which he so holdeth of him for life, or in tayl, or in Fee without the Kings License, Then the King ought for to seife the Land for a Fine,&c. But if a man holdeth of the King as of any Honour, or Castle, or Mannor being in his hands, which he hath by descent from any Collateral Ancestor, and the Tenant doth alien as above his Lands without License granted him by the King; Then if the Sheriff or Escheator will distrain or disturb the possession of the Alienee, he shall have a Writ upon the Statute of 1 E.3. cap. 13. which shall

be fuch: Rex Escheator. suo ultra Trent. vel Escheatori suo in Com. S. salutem, Cum de communi confilio regni nostri statutum sit; Ne quis occasione acquisitionis terrarum seu tenementorum, que denobis ut de honoribus tenentur in capite, licenc. progenitorum nostrorum quondam Regum Anglia, seu nostra super hoc non obtenta fac. occasionentur : Vobis mandamus, quod R filium I de C Capellanum occasione acquisition. quam tempore Domini Edwardi nuper Reg. Angliæ, fec. Robert. de Saumby Milit. de una bovat. terr. cum pertin. in E, que de nobis ut de honore de T tenent. in Capite ut dic. si de nobis sic teneant non occasionetis contra formam statut. supradict. Teste,&c.

Gg3

And

And upon that he shall sue an Alias, and Pluries, velcau-Sam nobis significes, &c. And thereupon an Attachment against the Escheator or Sheriff if they distrain or disturb him after that Writ directed unto them, if the lands be holden as above is faid. But it appeareth by that Writ, That a man may hold of the King in Capite, as of an Honour, but the same is against the Register in the beginning of the Regifter; as appeareth by the Pracipe in Capite: But theuse at this day is to take a Fine of him who holdern of the King of any Honour, which is the Ancient Inheritance of the King, who alieneth his land without License; But Quere what in Right ought to be done in that case.

Writ quod Clerici non Eligantur in Officio Ballivi, Oc. pro terris fuis.

IF a man who holderh certain Lands or Tenements by R reason of his said Lands ought to be chosen Bayliff, or Beadle, or Reeve, or in such like Office for his Lands; If fuch a man be made a Clerk, or is within holy Orders, Then he ought not to be chosen into such Office for his Lands. And if he be elected to such Office of Bayliff or Beadle, &c. he shall have a Writ to discharge him, which shall be fuch:

Rex Ballivis I de L. Salutem. Cum secundum legem & con-Suetudinem regni nostri Anglia Clerici infra Sacros ordines con-Stituti, ad officium Ballivi feu Bedelli eligi non debeant , nec hactenus confuever ac jam ex parte T de M. Magistri Hospitalis nostri de C capellani acceperimus, quod vos ipsum Magistrum ad Officium Ballivi feu Bedelli manerii pradict. elegiftis jam de novo, & ipfum Officium illud affumere compellere nitimini, in ipfius Magistri grave damnum, & contra legem & consuetudinem supradictam: Super quo nobis supplicavit, sibi per nos de remedio provideri, & quia non est juri consonum, quod dictus Magister, qui nobis in Hospitali prædicto pro Salubri Statu nostro, & pro animabus progenitorum nostrorum quondam Regum Anglia, & pro statu ejusdem Hospitalis ac Cantariis, Eleemo-Synis, & aliis piis operibus in eodem Hofpitali manutenendum & sustentandum continue deservit ad desistendum alibi extra [176] Justentanaum contenue acquires compellat. Vobis pracipimus, quod districtioni & compulsioni si quas eidem Magistro ad Officium Ballivi fen Bedelli in Manerio prædicto affumend. feceritis, omnino supersedeatis, & eas fine dilatione relaxetis, & denarios si quos per amerciamenta, vel alio modo ex causa predicta

pradicta ab eo levaveritis, eidem Magistro restitui fac.indilat. sub periculo quod incumbit, Teste, &c. And he may have an Alias, and a Pluries, and Attachment upon the same.

Writ that Parsons, nor Prebendaries shall not be charged for their Goods in their possessions to Fifteens, which are annexed to their Prebends.

A The Writ for Prebendaries, or other spiritual persons to be discharged for their goods of the Benefice in their possessions lieth; Where the Sherist or Collectors of the Fisteens will distrain the Parsons or Prebendaries in their spiritual possessions by their goods being in their possessions to be Contributories to the payment of Taxes or Fisteens granted,&c. And if they be distrained, they shall have such writ:

Rex Taxatoribus decime & XV. nobis ultimo per communitatem regni nostri Angliæ concessarum in com. Glocestr. salutem. Ex parte W, Prebendarii Præbendæ de B in Eccles. de S, nobis est oftens. quod cum vos occasione x. & xv. predictar. nobis per laicos concessar. in propriis bonis ipsius W, de temporalibus Prabend. Jua pradict. annexis exeuntibus, qua ad decimam inter spiritualia in singulis taxationibus, præstationibus, bujusmodi decime taxantur, & de quibus decimis dari consuevit prædictam decimam, & quindecimam inter laicos affidere, taxar. & levare intenditis minus juste, in ipsius W damnum non modicum & gravamen. Et quia nolumus quod idem W de hujusmodi bonis suis, de quibus decimam nobis dat inter Spiritualia de predict. decim, & quindecima per laicos concess. oneret. Vobis mandamus, quod ipsum W in propriis bonis suis, quæ inter spiritualia ad decimam taxantur, & de quibus decimam nobis dat, ut prædictum eft, ratione decime & quindecima predict. nobis per laicos concessa non moleftetis in aliquo seu gravetis, & distriction. si quam ei ea occasione fieri feceritis, fine dilatione relaxar. fac. eidem. Proviso quod de terris & tenementis, si que per pref. W vel prædeceffores fuos ad prædict. præbend. post Annum Domini Edwardi quondam Regis Angliæ avi nostri vicesimum, acquisita fuerint, nobis de bujusmodi decima & quindecima juxta bonorum & catallorum in dictis terris & tenementis existent, & de eisdem provenient. respondeat. ut est justum, Teste, &c. And upon that he shall have an Alias, Pluries, and Attachment.

Writs directed to make Proclamation, that none cast Filth or Dung into Ditches, or Rivers, near Cities or Boroughs; made Anno 12 R. 2. cap 13.

If any one cast any dung, filth or intrails of Cattel into B Ditches, Waters, or other places which are next to any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor, or Sherist or Baylist of such Town, &c. That they make Proclamation that none so do, and that those that have so done, that they cause to remove and carry away the same from thence; And this Writ is sounded upon the Statute of 12 R. 2. cap. 13. and

the Writ is fuch:

Rex Ballivis suis Vill. de Novo Castro super Tinam salutem, Cum in Statuto in Parliamento nostro apud Canterb. Anno regni nostri 12 tento, edito, inter alia contineat. quod proclamat. fieret, tam in Civitate Lond. quam in aliis civitatibus, Burg. Villis, & corum suburbiis ubi necesse foret, tam infra libertates, quam extra, quod omnes illi qui fimos, exitus, intestina, aut alia fetida jactaverant seu posuerant in fossatis, ripariis, aquis, & aliis locis infra, circa, & prope diversas Civitates, Burgos, & Villas regni nostri Anglia, & Suburb. eorundem, ea totaliter amoverent & affortarent ante festum, &c. sub pæna XX l. nobis solvend. Et quod Majores, & Ballivi de qualibet Civitate, Burg. & Villa & etiam Ballivi libertatum eos compellerent ad hoc faciendum, sub pæna consimili. Et insuper , quod proclamat. fieret tam in dicta Civitate Lond. quam in aliis Civitatibus, Burgis, Villis, & aliis locis superius nominatis, quod nullus cujuscunque conditionis foret, bujusmodi nociva, exitus, fimos, intestina, & fetida in fossatis, ripariis, aquis, & locis supradictis extunc jactaret, sive poneret. Et si quis hoc fecerit, vocetur coram Cancell. per Breve ad sellam illius qui se inde conqueri voluerit, er fi inventus foret inde culpabilis, puniatur secundum discretionem Cancellar, prout in statuto prædicto plenius continetur. Jamque ex parte dilectorum nobis in (brifto Prioris & fratrum Ordinis Heremitarum S. Augustini dieta Vill. de Novo Castro super Tinam intellexerimus, quod quamplures homines ejusdem Villa, fimos, exitus, intestina, & alia fetida in quadam via que se ducit prope mansion. prædict. Prioris & fratrum in eadem Vill. jactaverunt & posuerunt, in ipsorum Prioris & fratrum, ac aliorum conversant. & transeuntium ibidem nocument. & Vill suc periculums

periculum manifestum & contra formam statuti prædict. Nos volent. statut. illud inviolabiliter observari, vobis præcipimus, frictius injungentes quod in Vill. prædict. ex parte noftra proclamat. fac. ne quis, cujuscunque conditionis fuerit, aliqua nociva, exit. fimos, intestina, seu fetida quæcunque in via prædict. jactet feu ponat. Et quod omnes, & finguli qui bujufmodi nociva ibidem jactaverint seu posuerint, ea sine dilatione amoveant & afportent juxta formam Statut. prædict. Tefte,

And it seemeth, That the Chancellor may award a Pone against him, or an Attachment to make him come before him in the Chancery; and there punish him according to his discretion. And it seemeth that he who is grieved by that Nusance, may have an Action upon the Statute against him who did the Nusance, and recover damages for the Nu-

fance done to him, tamen Quare.

But by the Common Law, if a man doth any thing to the annoyance of my Freehold, or of my Land in which I have an estate for years, I shall have my Action upon the Case for the same, or a Writ of Nusance if it be annoyance unto my Freehold.

### Writ of Affife of Novel Diffeifin.

A THE Writ of Affife of Novel Diffeifin lieth, where Tenant for life, or Tenant in Feefimple, or in tail is diffeifed of his Land or Tenements, or put out thereof against his will, that is a Diffeifin; and he shall have an Affise of Novel

Diffeisin of that oufter, &c.

And the Rule in the Register is, That if a man will bring an Affife of Novel Diffeifin of Lands in the County where the Common Pleas is; That then the Affise shall be brought in the Common Pleas: and if the Common Pleas be in one County, and the Kings Bench in another County, if the Assiste shall be brought of Lands in the County where the Kings Bench is, Then the Affife shall be brought and returnable in the Kings Bench: and if both the Benches be in one County, the usage is to bring the Affise in the Common Pleas or Kings Bench at pleasure; but that, as I think, is against the Rule of the Register.

And the Affise of Mortdauncestor shall be brought in the See before like manner, as the Affise of Novel Deffeisin shall be before 109. acc. the Justices of the Common Pleas, or Kings Bench; and in Attaint, in the 1636 of the Common Pleas, or Kings Bench; and ve.7 Aff.7. in the Affise a day certain shall be put thus; usque in diem Br. Affise

10218 120.

30 Aff.44.B.

Affife 116.

tent ought

fitteen daies

before the

Any 134.6.

Jovis post Quindenam, &c. But in Affise of Mortdauncestors the common day shall be in Quindena, &c. vel in Octabis

&c. as in other pleas.

And in an Athie of Novel Diffeisin in the Common Pleas. or in the Kings Bench, the Justices may give day out of Term, thus, ufque ad diem Jovis proxime post festum S. Lucia &c. because that the Affise hath not any day of Return in for their Pa- the Term, but day certain which the Justices will give, and that may be as well out of Term as in Term. And by the to be dated Statute of Articuli Super Chartas, in every Writ of Summons and Attachment there ought to be fifteen daies betwixt; the date and the return thereof; but in Affise of Novel Diffeifin in the Common Pleas, or in the Kings Bench, there needeth not be fifteen days between the date and re-

turn thereof, as it feemeth by the Statute.

Br. Affife 300.

And in Athle of Novel Diffeifin fued before Justices in E Eyre, or before Juffices of the Kings Bench, or Common Pleas, the Plaintiff ought not to have any Parent to the 29 Aff. 40. Justices, for they have authority without a Patent; And so have Inflices of Affise authority to take Affises of Novel Diffeisin without any Patent made unto them by the Statute of west.2. cap. 13. but then the form of the Writ is

> Rex Vic. &c. Queftus eft nobis A, quod B injufte ig fine F judicio diffeif. eum de libero tenemento suo in C, post primam transfret. Domini H Regis filii in I in Vascon. & ideo tibi præcipimus, quod si prædict' A fecerit te secur. de clamore suo profequend. tunc facias tenement. ilind refeifiri de catal. quod in ipfo capta fuer. & ipfum tenementum cum catal. effe in pace. usque ad primam assisam cum Just nostri in partes illas venerint, & interim fac. 12 liberos & legales homines de Vifnillo.vider. tenement. illud, & nomina illorum imbreviari, & fum. eos per bonos sum. quod fint coram prefat. Just. ad prefat. aff. parati inde facer. recognit. & pone per vid. & falvos pledg. pr.ed. B. vel Ballivum fuum fi ipfe inventus non fuerit, quod tunc fit ibi ad aud. ill. recogn. &c. & habeas ibi fum. nomina pleg. & hos

Which proves, that the Bayliff is party quo- breve.

122.

And if the Writ of Affise be brought before other Ju G dammodo. flices than before the Justices of Affise in the same County, Ve. 7. Aff. 12.Br. Affife Then the Writ shall be in another form, which is

fuch:

Rex Vic. &c. Questi funt nobis A & B uxor ejus quod C H injuste, &c. diffeisivit cos, vel præfat. B de libero tenemento Suo in N. Et ideo tibi præcipimus, quod si prædict' A & B fecerit, &c. in pace ufque ad certum diem quem dilecti & fiaeles

fideles nostri R& F tibi scire sac. & interim, &c. & sum.&c. quod tunc sint coram prafat. R& F, & his quos sibi associaverimus ad certum locum quem idem R& F tibi scire sac.parati inde sacere recognitionem. Et pone, &c.

And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assis of that County, and the Patent shall be

fuch:

Rex dilectis & fidelibus suis R & F, salutem. Sciatis quod tonsituimus vos Just. nostros una cum his quos vobis associativerimus. ad ass. Novel diss. capiend. quam A & B uxor ejus arrain. coram vobis per breve nostrum versus C de tenementis in N, & ideo vobis mandamus, quod ad certos diem & locum quos ad hoc provideritis ass. illam capiatis factur. inde quod ad Just. pertinet secundum legem & consuetudinem regni nostri, salvis nobis amerciamentis inde provenientibus: Mandamus enim Vic. nostro Linc. quod ad certos diem & locum quos ei scire fac. ass. illam coram vobis venire fac. In cujus rei testimon.

has literas nostras fieri fecimus patentes. Tefte, Os.

And if the Writaforefaid be directed to the Sheriff, and those who are assigned by the Writ to be Justices of that Assis, be the Justices of Assis in the same County, then it seemeth the party needeth not to have a special Patent to them for that Assis is, For their general Patent to them to take all Assis shall be sufficient for that Assis and all other Assis: For the Justices of Assis such to make one general Precept for all Assis according to their general Commission and Patent; and not to make a special precept for every special Writ directed to the Sheriff, and especial Patent made unto them to take any special Assis for such party.

And if an Affise be brought in the Common Pleas, or

Kings Bench, there the form of the Writ is:

Questus est nobis A, quod B injuste, &c. (usq. ibi) in pace, usque ad diem Sabbati in Ostavis S. Michael proxim. futur. Vel lic, usque in diem Sabbati proxim. post crastinum animarum proxim. sutur. & interim, &c. & summ. &c. quod, &c. coram nobis apud W, vel coram Justic. nostris apud W parati inde, &c.

And in Affise when he purchaseth the Writ, he ought to find sureties in the Chancery, and then the form of the Writ

is luch:

Rex, &c. Questus est nobis A, quot injuste, &c. diss. eum de libero tenemento suo in N, post primam transfretat. Domini H. Regis filii I in Vas. Et quia prediss. A fecte nos fecur. de clamore suo prosequend, per C & D in Com. tuo, tibi pracipimus, quod facias tenementum illud reseisiri, &c. (ut supra.

And another form of the Writ against a body corporate,

thus :

Questus est nobis A, quod B Major Civitatis C, & communitas ejuscem Civitat. injuste. & C. Vel sic, Questus est nobis A, quod I Abbas beatæ Mariæ Ebor. & frat. P de C, commonachus ejuscem Abbatis & frat. I de P conversus ejuscem domus injuste, & C. Vel sic, Questus est nobis C Capellanus Cantariæ in Eccles. de N, quod Binjuste, & c.

If a man have a rentfervice, or a rent charge, or rent feck, isfluing of Land for life, in tail or in fee, if he be disserted of the rent, he shall have an Assise, and the Writ shall be general; quod in juste, &c. disservice the eum de libero tenemento

fuo in N, and shall make histitle to the rent.

And the Rule in the Register is, That when a man is disselsed of a rent charge, or of a rent seek, it behoveth that all the Tenants of the Tenements charged, be named in the Writ of Assis, and all the land put in view, although he were disselsed but by one Tenant only, but it is otherwise of a rent service.

And in an Affife of Novel diff. a man shall not youch any one, unless he be named in the Writ, and present when he is youched, and would presently enter into the warranty,

and warrant the land, &c.

But in an Affise of Mortdauncestor, he may vouch at I large. And a man shall have an Affise of Novel Disseis of an Office if he have the same for life; and the Writ shall be, Quod disseis vit eum de libero tenemento suo in D, and he shall make his plaint of the office, and shew his title in the plaint.

6 Aff. 12.Br. Affife 145. And fo if a man have any profit granted unto him out of land for life, or in Fee, as to have the fruit of apples, nuts, acorns, or other profits whatfoever, he shall have an Affile of them if he be disserted of them, as appeareth by the

Statute of West. 2. cap. 25.

And so of Toll, Tonnage, Passage, Pontage, Pannage, G and other like. And if Tenant by Statute Merchant, or by Statute Staple be disserted of any Lands which they have in execution until their debts be levied, they shall have an Assis of Novel Diss. and recover their term; and yet they shall have but a Chattel, seil. the land for a certain term of years, but that is by reason of Statutes thereof made.

And

B

And so he shall have an Assise,&c. of the land which he hath in execution by Elegit, if he be deforced thereof by

the Statute of West. 2. cap. 18.

And by the Statute of west. 2. cap. 25. Affise is given if one with his cattel do eat the feveral pasture of another, the other may have an Affise of the pasture, and wave the possession, although the other do not claim the freehold of the land.

And foif the Lord, or other man who hath a rent issuing 27 Afife 52. out of the lands, do often diffrain for the rent or fervice Br. Af. 274 out of the lands, do often diffrain for the tent of terrice 28 off. so. where none is behind, the Tenant may have an Affic for 6. Br. Aff. this diffress by the Common law. And that Affise lieth 291. between the Lord and the Tenant, or between the Lord paramount, and the Tenant paravail, as appeareth 27 Aff. 51. But it seemeth reasonable, that the Tenant have the Affife of Sovient faits diffrained against him who claimeth a rent charge out of land, tamen quare. And if a man sueth divers Assises against one man in several Towns, or against feveral men in feveral Towns, he may fue forth a patent to

the Justices for all those affises, and the form of the Patent shall be such:

Rex dilectis, &c. salutem. Sciatis quod constituim. vos, &c. ad Aff. Novel Diffeif. &c. quam, &c. de tenementis in N, & ad Allisam Novel Disseis. capiend, quam idem A, &c. coram [179] vobis per aliud breve nostrum versus, &c. de tenementis. Et sic

fi plures fuerint.

If a man be feifed of parcel of a Rent which is payable at a day, and afterwards the Tenant will not pay the refidue of the fame rent which is due at the fame day, he who ought to have the Rent shall have an Assise of Novel Diffeisin of the whole Rent, as well of that which he is 29 Aff,22. feifed of as of the refidue, and that feifin of parcel of the Br. Aff. 302.

B rent shall be to him a seisin of the whole rent. And if a Fuz. 288. man do diffrain for his rent pendant an Affife for the same rent, he shall abate his Affise, but if he distrain for Homage pendant the Affise for the rent which is parcel of that service, that shall not abate the Affise, for an Affise doth not of Quare if for

Homage.

And seisin of rent by an Abbot shall be a sufficient seisin stress 28 for the Successor to have affise of the rent if he be denied Aff. 50. Br. the fame, or rescous made against him, but seifin of rent Ass.291. of the father shall not be sufficient seifin to the Son, to have an affife of the rent if rescous be made unto him of the rent; because that the Abbot hath the rent in the right of his house, which house continueth, and so the seisin of

12 ht. 2 ton . ct 443:

the predecessor is the seism of the Successor, but the father hath the rent in his own right; and the fon shall have the fame in his own right; and then he ought to have a new D 7 Aff. 18. feifin. And a man may have one affile of feveral rents, or Br.Aff.127. of land and rent, and Offices and profits apprender in his 11 Aff.13. foil, and all in one VVrit. And the Lord Paramount may E sbid. 168. 18 Aff. 4.20. have Common appendant in the lands of the Tenant Paraper Curiam. vail to his lands which he hath by purchase; and the Tenant Paravail may improve against the Lord Paramount, as 15 H.7. 10. well as he may against other Commoner or Neighbour, if If there be he leave him sufficient Common. Quod ve. M.19 E.3.t. Affile fufficient at

the time of in the Abridgment. And the seifin of the Guardian, shall give seifin to the F provement, Ward to have an Assise if he be disseised. And so of Tenant by Statute Merchant. And seisin by the hands of Tenant for life of lands out of which a rent is issuing is a sufficient is not material. Aff. 18. feifin to have an Affife of the rent, if it be afterwards de-

nied.

8 H.16,17. 8 Aff. 16. affife 191.

the im-

although

nor after it

And so it seemeth payment of the rent by the Tenant for years of the land is a sufficient seifin to have an Assise of the rent if so it be afterwards denied, Tamen quære.

A feme Covert shall not be a diffeiforess of any Land if she G do not actually enter, nor shall she be a diffeisores by the husbandsact. And an Infant shall not be a disseifor by his commandment. But a man of full age may be diffeifor if he command another to enter into land.

If a man recover a rent, the Sheriff may put him in feifin by wood, or by any parcel of the land out of which the

rent is illuing.

And seisin of rent by a Parson, or a Chauntry Priest H which they have in the right of their Church, shall be a feisin to their Successors to have an Affise of the rent, if they be denied the same after the death of their predecesfors as well as of an Abbot,&c. quod ve. 34 E.3. Lib. Aff.

A man shall not be adjudged a diffeifor by the act of his Tenant at will, although the Tenant at will do rescous for rent,&c. he shall be adjudged the sole differsor and not the Tenant of the Freehold; But if the Tenant of the Land pay the Rent unto a stranger who ought not to have the 'fame, that payment is a diffeifin to him who ought to have the Rent.

# Writ of Common of Pasture, Turbary or Piscary.

L The Writ of Assise of Novel dissist, of Common of Pasture, or of Turbary, or of Piscary, lieth wherea man hath Common of pasture appendant or appurtenant to his Mannor or house, or Land which he hath for term of life, or in Fee-simple, or in Fee-tail, if he be disturbed of his common, so that he cannot take it as he ought to do, he shall have an affise of Novel dissission thereof, and the writ shall be such:

Rex Vic. &c. Quest-est nobis A, quod B injuste, &c. dissei- I I H.6.22. fivit eum de commun- pastur. sua in N, qua pertinet ad liber. The Writ tenement. suum in eadem villa, vel in alia villa post primam, was de libero &c. as in assisce fland. Et ideo tibi pracipimus, quod si and his pracist. A secerit te secur &c. tunc sac. duod. liberos & legales plain of homines de visn. illo videre pasturam illam & tenement. & Common of nomina eorum imbreviari: Et sum.&c. coram sustic vel cora pasture, soe nobis,&c. die sovis, proxime post crastin. Ostabir, &c. Vel which the socion sustic sustice nostris ad prim. assis, cum in partes illas writ abated venerint, Vel sic: Coram dilectis & sidelibus nostris R&F, & bis quos,&c. ut supra.

And if the Common of Pasture, or Turbary, or Piscary, be not appendant or appurtenant to any Mannor nor Land, nor Tenement, then those words in the Writ which belong to bis franktenement shall be lest out in the Writ, and then

the Writ shall be such:

E

F

G

H

Rex,&c. Questus est nobis A,quod B injuste,&c. disseisivit eum de comm.past.suæ in N, post primam transfretationem, &c. (usqueibi,) de vicin. illo videre pasturam illam, & nomina

corum imbreviari, oc.

As in the Writ of Affise of Land. And the Patent made unto the Justices of the Affise of Common, is as the Patent made to the Justices of Assis of land, but where it is said in the Patent of affise of land that place, de libero tenemento II H. 6.22.

Suo, & c. he shall say in this Patent, de Communia pastura in N, per paston.

And if a man have Common appendant or appurtenant This lay at to his Freehold which is his Mannor or Land which is in Conton law for feveral Counties, and he is districted of his Common, then Common to the following the state of the final have an Affise in the County where the Common is, and the grown and another Writ in the County where the Land is, to which state the Common is appendant or appurtenant. And if the Land 194:

7 Aff. 18. Br.Aff. 127. 11 Aff.13. sbid. 168. per Curiam. 15 H.7. 10. If there be fufficient at the improvement, although nor after it is not mate-

the predecessor is the seisin of the Successor, but the father hath the rent in his own right; and the fon shall have the fame in his own right; and then he ought to have a new D feifin. And a man may have one affife of feveral rents, or of land and rent, and Offices and profits apprender in his foil, and all in one VVrit. And the Lord Paramount may E 18 Aff.4.20. have Common appendant in the lands of the Tenant Paravail to his lands which he hath by purchase; and the Tenant Paravail may improve against the Lord Paramount, as well as he may against other Commoner or Neighbour, if he leave him fufficient Common. Quod ve. M.19 E.3.t. Affife the time of in the Abridgment.

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nied.

8 H.16,17. 8 Aff. 16. affife 191.

And so it seemeth payment of the rent by the Tenant for years of the land is a sufficient seifin to have an Assise of the rent if so it be afterwards denied, Tamen quære.

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And if the Common of Pasture, or Turbary, or Piscary, be not appendant or appurtenant to any Mannor nor Land, nor Tenement, then those words in the Writ which belong to his franktenement shall be lest out in the Writ, and then

the Writ shall be such:

Rex,&c. Questus est nobis A, quod B injuste,&c. disseistvit eum de comm.past.suæ in N, post primam transfretationem, &c. (usque ibi,) de vicin. illo videre pasturam illam, & nomina

corum imbreviari, &c.

As in the Writ of Affise of Land. And the Patent made unto the Justices of the Affise of Common, is as the Patent made to the Justices of Affise of land, but where it is said in the Patent of affise of land that place, de libero tenemento II H.6.22. Juo, &c. he shall say in this Patent, de Communia passura in N, per paton.

And if a man have Common appendant or appurtenant This lay at to his Freehold which is his Mannor or Land which is in Son on tand for feveral Counties, and he is differred of his Common, then Company a fact for he shall have an Affise in the County where the Common is, not his grown and another Writ in the County where the Land is, to which that which shall be common is appendant or appurtenant. And if the Land 194:

or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ shall be brought in the County where the Land of which the Common is issuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in several Counties. Then he shall have several Writs in the County where the Common is, and where the land is, and the forms of the writ are such as the several where the land is, and the forms of the writ are such as the several where the land is, and the several where the land is the several where the several w

Questus est nobis A, quod B injuste & sine judicio disseistvit eum de Communia Pastur. suæ in N, quæ pertinet ad liberum tenem. suum in R & K quæ sunt in consinio Com. tui, & Com. Linc. post primam transsiretat.&c. vel sic, de Com. past. suæ in N in Com. tuo, & Com. Linc. quæ pertinet ad liberum tenem. suum in K in Com. &c. Vel sic, de Communia pasturæ suæ in R & K quæ sunt in consinio Com. tui, & Com. Linc. quæ pertinet ad liberum tenem. suum in K in prædict. Com. Linc. in eodem consinio.&c.

And upon these Writs he may have a Patent directed to certain persons who shall do Justice in that Assise upon all

the Writs.

Rex dileHis,&c. Sciatis quod constituimus vos Justic nostros, una cum his quos vobis associavimus ad Ass. novæ diss. capiend.quam A arrainavit coram vobis per brevia nostra versus B de communia pastur. in R & K, que sunt in consinio Com. N & L ideo vobis mandamus, quod ad certos diem & locum in consinio com.prædict. vel in consinio præd. quos ad hoc provideritis assisam illam capiatis, factur. &c. Mandamus enim Viccom.præd. quod ad certos diem & locum in consinio Com. præd. vel in consinio predict. quos eis scire sac. assisam illam, &c.

And in like manner he may fue feveral Writs of Affise of Common of Turbary, or of Piscary, or other like profits which are in two Counties. And when a man hatha Rent which is issuing out of Land in two Counties, if he be difficied thereof he shall have an Affise as before is said of

10 Aff. 5. Common, viz. 2. Writs, one Patent as before is faid by the Br. Aff. 151. Statute 7 R.2. cap. 10.

45 E 3.12.
15 E 4.32.
Ryot.
6 H 7.14.
Cattel of ftrangers, unless he bring them to soil his land:
But he cannot agift other Cattel there for mony, which do

11 H.6.12. not manure his Land.

1 5 E.4.32.

21 H.6.9,10

7 H.4.30.

5 E.4.2.ac.

The same Law where a man hath Common as an Inhabitant he shall have it, but for those which are levant and couchant within that Town.

And

H

And if a man grant Common unto one for his own Cattel, A man prehe cannot use his Common with the Cattel of a stranger.

fumed to
have Com-

mon appendant for all manner of Beafts, and it was holden it could not be Common appendant for that the same is not, but for those Cattel which manure his Lands, 9 E.4.3. 37 H.6.34, and 14 H.6.6. But it is Common appurtenant, Old: N.B.26

And so if a man prescribe to have Common for his own Cattel, he cannot use Common with other Cattel.

But if a man claim Common for Cattel without number, or to have Common for twenty Cattel, there he may agift the If a man Cattel of strangers for money in that Common.

hath Common sans

number granted, yet the Tenant shall have Common for his Cattel, 11 H.6.22.

C And a man may claim Common appendant rations Message Message gii, but it seemeth it shall be taken that he hath Land lying 37 H.6.34-to his house, &c. which the Cattel ought to soil, &c. Administration But Prisot, it cannot be it cannot be

but to arable. 20 H.6.4. Halls ac. 5 aff. 2. it cannot be but to antient Land of that; and not to Land improved. 10 E.2.ac. and there the Land to which it may be appendant is called aid and gain.

D None shall claim Common by Vicinage but that Lord who

hath the possession of the Town, 23 H. 6. But yet it seem- 7 E. 4. 26: E eth, that one Neighbour may claim Common by Vicinage in 32 H. 8. the Land of another Neighbour, although he be Lord of the Dyer. 47. Town, &c. And if a man claim Common in certain Lands so 37 H. 6.342 long as he dwelleth in such a Town to such a House; Or if he claim Common in the Land until the Lands be sowed, and after the Corn is cut to have Common there again.

And if a man be diffeifed of the Common appendant or 19 H.6.73. appurtenant to his Land, and afterwards he maketha Feoff- So if he be ment of the Land to which the Common is appendant or apdiffeifed of purtenant, he shall not have Affise of that Common nor other the Land he remedy.

If a man grant certain Lands to one *Cum Communia* in ommon till his nibus terris suis, &c. And doth not express any place certain, entry, he shall have Common in all his Lands which he had at the 5 H.7.7. time of the grant.

H And if a man have Common of Eftovers by grant he can- 7 E.4. 2.72 not build new houses to have Common of Estovers for those

The user of Common by Tenants at will, shall be a seisin to him in the Reversion to have an Assise, if he or his Tenant at will be after disturbed to use the Common. 14 H.6.8.

H la And

And P. 45. E. 3. It appeareth that he who hath Common R granted unto him by fpecialty cannot agift other mens Cattel in the Common but ought for to use the Common with his own Cattel, or such Cattel which he hath to Occupy his Land with, &c. or may manure his Lands with Cowes which

Thoyre faid that if a man grant to me Common for my Cattel, that I may take others Beafts to give me feifin in my Common, and prefently drive them off again, if he who arrayes the common do agree the results.

7 Aff. 2r. granteth the Common do agree thereunto. And affise of Affise. 121. Common, all the Tenants of the Land out of which the Common is, ought to be named, &c. As in Affise of a Rentcharge.

If a man have an Affife of Common, and pendent the Writ, M he ufeth the Common, the Writ shall abate, but if the Cattel escape into the Land, it shall not abate the Writ although

they feed there.

And it is to know, Common appurtenant to a Mannor N may be for Cattel without number, or to a certain number, and may be appurtenant to a Mannor by prescription or by grant made fince time of memory, and that as well for Cattel certain, as without number. As if at this day a man granteth to one Common of Estovers, or of Turbary in Fee-fimple to burn in his Mannor, by that grant it is appurtenant to the Mannor, and if he make a Feoffment of the Mannor, the Common shall pass to the Feoffee. And

Plow. Com. fo if he grant to a man and his Heirs Common as ap381.ac.5.

Aff. 9.

Moore, &c. Now by that grant the Grantee shall have
the Common appurtenant to his Mannor, and if he make
a Feoffment in Fee, or for life of the Mannor, the Feoffee or Lesse shall have the Common. As if an Abbot with the assent of his Covent grant to another and
his Heirs to find a Chaplain to Sing in his Chappel
2 H. 4:6. in his Mannor of D. if he make a Feoffment of the

2 H. 4.6. in his Mannor of D. if he make a Feofment of the 10 H.7.13. Mannor, the Feoffee shall have an Action of Covenant 16 H.7.9. against the Abbot and his Successor by that Grant as 12 E. 3.3. it appeareth, M. 2. H. 4. 6. T. Covenant, and H. 42.

E. 3.

## Writ of Certificate upon Affife fued.

THE Writ of Certificate lyeth in divers manners; one is where the Defendant appeareth by Eail and pleads to As a fine of the Affise where his Master hath a release to plead, or other Recovery. matter in writing, of which the Jury cannot have notice, then 8 E. 3. Br. if the Affife passagainst the Bailiff, the Master shall have a H. 4. 4.5. Writ of Certificate upon that Writing, and thereupon he shall cause the Assise to return and to be sworn to try that deed, &c. as shall be more fully after shewed.

And there is another manner of Certificate when the verdict is not well examined by the Juffices when they take the verdict, or when they have not well examined, or fully enqui-

red of the iffue joyned, &c.

And the Certificate ought to be fued in the fame County 21 E.3.3. where the Affise was sued, and may be sued before the same Br. Affise 65? Justices before whom the Athle pailed, or before other Justi- Ve. 32: Aff. 1: ces. And if the Kings Bench or Common Pleas be in the same have a cer-County where the Affise passed, then the Certificate may be tificate upon fued in the Kings Bench or Common Pleas, if they be in the a defeafame County where the Affife paffed.

And that Certificate shall be a Writ directed to the She- 12 H.4.10. riff, and the Justices shall have a Patent made to them as they 4. I Aff. 5. shall have in Assis, &c. And the form of the Patent made Certificate was at the

to the Justices shall be such:

Rex dilectis & fidelibus suis A.B. & C. Salut. Quia super Law before quibusdam articulis contingent. Affifam nove diff. q. inter A. Judgment. & B. sum. fuit & capta coram vobis pref. B. & dilecto & fideli Ve. 8. E. 3. nostro. I. apud N. per breve nostrum quædam subsunt dubitationes, Fitz. Assise sicut ex querela ipsius A. accepimus, constituimus vos Justic. no-412. Plow. ftros, una cum his quos vobis affociaverimus ad certific. inde capiend. Et ideo vobis præcipimus, quod ad certos diem (y locum, quos ab hoc provideritis, certific. illam capiatis, factur inde quod ad Justic. pertinet faciend. Salvis nobis amerciamentis, &c. Mandavimus enim vic. nostro, &c. quod ad certos diem & locum, quos ei scire faciatis, jurat. illius ass. coram vobis venire faciat. ad certificand. vos super articulis præd. &c. In cujus rei testimon. has literas nostras fieri fecimus patentes, Teste, &c.

And the form of the Writ of Certificate is fuch:

Rex Vic. &c. Quia super quibusdam articulis conting. Aff. nov. diff. que inter A. & B. sum. fuit & capta coram dilectis & fidelibus nostris H. & R. apud N. per breve nostrum de tenent. in I. quædam subsunt dubitationes, sicut ex querela ipsius A. accepim. constituim. pref. H. & R. vel fic, praf. H. & dilect. & fidels

Common

fidel. nostrum L. vel sic. dilect. & fideles nostros N. & S. Justic. nostros, una cum his quos sibi associaverimus ad certific.inde capiend. Et ideo tibi præcipimus, quod ad certos diem & locum, quos præd. N. & S. tibi scire fac. jurat. illius ass. coram eis venire fac. ad certific. eos super articulos præd. & sum.&c. præd.B. quod &c. coram,&c. ad audiend. illam certific. & habeas ibi nomina. jurat. & hoc breve.

And that writ lyeth properly where the verdict is not well F examined. But if he appear by Bayliff to the Affife, and plead Nul.tort. &c. and it is found againft him where his mafter hath a releafe to plead, and doth not plead it; then his mafter (hall have another form of Writ upon the Statute

of west.2.cap.15. and the writ shall be such:

Rex dilect. & fideli suol. & sociis suis Justic. &c. cum in Statuto edito apud Westm.contineatur, quod fi def. contra quem tran-Gerit Affifa in fua absentia oftendat cart. vel quiet. claim. Super quarum confestione non fuer juratores examinati, nec examinari potuerint, pro eo quod non fiebat mentio de eis in placitand. & probablignorari poterint confect. bujusmodi scriptorum. Justic visis script.illis faciant sciri parti que recuperavit, qd. sit ad certum diem, & venire faciant jurat.ejufd.aff. Et fi per veredictum jurator. vel forte per irrotulament. feript. ill.verificatur,puniatur ille qui affif. impetravit cont.fact. fuum per certam pænam in ftatut. præd. content. Ac ex querela E.accepimus, qd. I. nuper arrainavit quand. affifam no.diff. per breve noftr. versus præf. E.G alios &c. de tene nentis in S. quæ quidem affifa inipfius E. & aliorum abfenc. transivit. ut dicitur, ac idem E. quoddam scriptum quiet.claim. præfat. I. habeat de tenement. præd. super cujus confec. jurat.non fuer. examinati, nec examinari potuerunt, pro eo quod non fiebat inde mentio placiti: Vobis mandam. quod viso scripto ill. eidem E.in promiss. debitum & fest inum justic. complement. fieri fac. juxta form.Stat.pr.ed.T.&c.

And that Writ is as a Patent made to those Justices, & upon A that they award a certificate to the Sheriff, to warn the party to cause the Jurors in the Assise to come before them. And that Patent or Commission is commonly made to other Justices, as unto the Justices before whom the Assise passed, and the same appeareth by the words of the Patent, or Commission.

But by the Statute of Well. 2. cap. 25. appeareth, That if the Bayliff of the Defendant do alledge a Record in Barr of the Assis, the Justices may take the Assis notwithstanding that Plea of the Bailiff, & give judgment upon the Verdict, &c. But then the Defendant in the Assis may come to the Justices, and shew that he hath matter of Record to barr the Plaintiff in the Assis, &c. That at another time he barred

the

the Plaintiff in the like Affife, brought by him against the Defendant: Or that there is a Writ of higher nature depending between them for those Lands; and then he ought to fue forth a Writ, to caule the Record to be brought before the Justices, before whom the Assist passed, and thereupon when the Record cometh before them, if they perceive that the Record shall be aBarr in the Assistant the said Justices shall award a special Writ of scire facias out of the Record of the Assiste, to warn the party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant shall recover his feifin again, and double damages, and the Plaintiff in the Affile shall be imprisoned at the discretion of the Justices. the Defendant in the Affife have not any Record to shew, but a release, or other matter in writing, which might barr the Plaintiff who recovered in the Affile; then if the Defendant Thew those writings to the Justices, before whom the Assiste was taken, the Justices thereupon may award a special writ of certificate directed to the Sheriff that he fummon in the party, and that he cause the Jurors in the first Assis. &c. to try that matter, gge. And if it be found for the Defendant, then the Plaintiff who recovered by the Assis, &c. shall lose double damages, and shall be also imprisoned at the discretion of the Justices as appeareth by the said Statute.

But whether the Defendant shall sue a special Patent to the same Justices, to proceed as the Writ aforesaid is, or that they shall proceed and award a special Certificate, upon the matter in Writing shewed them by the Defendant hath been a question, because by the Judgment in the Assistand execution awarded, their authority by commission is determined as some say. But I conceive that the Statute is a commission and Patent sufficient, to give authority to them to award a special Certificate to warn the party, and to cause the Jurors of the Affise to appear before them upon the matter in writing shewed unto them, although Judgment be given in the dije and execution be past, for if there be such matter, then their authority remaineth to punish the Plaintiff for hissuit, and to restore the Desendant again unto his possession, by vertue of

the Statute as I conceive.

And if a man loseth in an Affise by default where he pleadeth by Bailiff, where he hath matter in Writing not shewed to the Jurors, he may fue a Certificate upon that matter before the Justices, at the next Affise following, or before the Justice of Assist, or before the Justices of the Kings Bench, or before the Justices of the Common Pleas, and the form of the Writ is fuch:

Rex Vic. &c. Quia, &c. ut fupra, (ufque ibi,) accepim. Tibi præcipimus, quod juratores illius Aff. venire facias coram Justiciar. noft. ad prim. Affifam, cum in partes illas venerint, ad certificand. eos Super articul. pred. & fum. &c. pred. B. quod sit ad præfat. assisam coram præf. Justiciar. ad audiendum illam certific.

And if the Certificate be fued before the Juffices of the

Common Pleas, then the Writ is fuch:

Rex Vic. &c. Quia, &cc. ut accepimus: Tibi pracipimus, quod juratores illius aff. venire facias coram Juftic. nost. apud west. tali die ad certificand. eos, &c. ut supra.

And if the Certificate be fued before the King, then the

Writ is as above:

Tibi pracipim. quod jurator. illius aff. venire. fac. &c. coram

nobis and E. die fabbati, &c. ad certificand. nos, &c.

If a man in an Allife brought against him pleadeth a release, D or other matter in writing in barr of the Affise, and the Plaintiff doth deny the fame, by reason whereof the same doth remain in the keeping of the Chief Justice of the Assist; and afterwards a new Commission is made to the Chief Justice, and to other persons, to take all Assists which remain to be taken in that County, for which cause they award areattachment against the Dest. and a Resummons against the Jurors; the Deft. may come and plead the release or writing which is in the keeping of the Chief Justice, which was denied; &c. And thereupon the Chief Justice shall have day until the next Affifes, to bring in the writing; and if before the next Assists the Kings Eench be removed to that County, and that record of the Affife is come into the same Court, and the Deft. is re-attached and appeareth not, but maketh de-Fault, for which the Affife passeth for the Plaintiff, &c. and that release not pleaded nor shewed, the Desendant shall have a facial Writ to the faid Juffice, in whose custody the release or writing is, to fend the same into the Kings Bench, and thereupon the Defendant shall have his certificate out of the Kings Bench, against the Pl. upon that matter, and such writ is in the Register.

If a man fue a Certificate, he may have a writ of Affocia- A tion upon that writ, as in an Affife of Novel Diffeifin, and also a writ of Si non omnis, as well as he shall have in Affife of Nov !

Diff.

12 M. 5.10. fo of Attaint.

And a man may fue the Certificate before the same Justi- B ces, before whom the Affise passed, and then the Certificate shall iffue out of the Rolls of the same Justices; But he may fue his Certificate before other Justices if he will, and then

then the Writ and Patent shall issue out of the Chancery. And if some of the Jurors be dead, yet it seemeth reaso. nable that he have the Certificate; and that it be tryed by those who are alive, and by others. &c. for that is a new matter upon which they were not charged before, but fee that matter debated. H. 7. H. 4. H. 12. H. 4. and 32 E. 3. lib. Aff.

Anno. 43 E. 3. It appeareth that a man shall have a certi- plowd: Pon: ficate before Judgment given in the Affife as well as after the 42:

Judgment given.

And a man shall have a Certificate upon an Assiste of Darrein presentment, or an Assiste of Mortdauncestor, or Juris utrum; and it is reason that a man have a certificate upon an attaint, if it pass against him by default, where he hath matter to barrthe attaint, by release, or other writing, &c.

And if the Record of Affife be removed into the Common Pleas, the party may fue a certificate in the Common Pleas before the Justices there, although the Assis be taken of Lands

in another County: See title process. H. 33. H. 6.

And the process in a Certificate is Summons against the 7 H.4:45.ac. Jury, and the Venire facias against the party, &c. and after a 33 H.6.20. 2 I. nota Cadiftrefs.

And Nife prins shall be granted in a Certificate, if the land pe pro fine be in another County, than where the Certificate is brought. ed pendent

## Writ of Affife of Nusance.

Sfife of Nusance lyeth where a man levieth a Nusance to 4 E.3.36. & my Freehold, which I have for life, in tayl, or in Feefim- 5 E. 2.43. ple, then I shall have the writ to redress the Nusance. Fitz. Nufan.

And if that the Nusance be done in one County, and the Land to which the Nusance is done in another County, then he ought to fue several Writs of Assis of Nusance, to each Sheriffa writ, and a Patent made to certain persons to 4 Aff. 3. If be Justices in that Assis, as it shall be in Assis of Common Nusance be, of partities in that Apple, as it man be in Apple of Common and after he the Writ is fuch:

is Alien the Land, the Feoffee shall not have Assise, because it was before his Interest, but the Tenant shall answer to the Nusance, as well before his time as after, 19 Asi. 9.

Rex Vic.&c. Questus est nobis A. quod B.injuste & fire judicio exaltavit quoddam stagnum in C. in com. tuo ad nocumentum liberi tenementi sui in L. in com. H. post primam transfretationem, &c. Et ideo præcipimus, quod fi præd. A. fecerit te fecurum de clamore suo prosequend. tunc fac. 12 liberos & legales homines de Hh 4

was awardthe Certiacare of Affife.

the Nusance

# Writ of Affife of Nufance.

vifa. illo videre ftagnum illud, & nomina corum imbreviar. Ge. And in the other Writ which shall be directed unto the Sheriff where the Land is, to which the Nusance is, he shall fay in the writ, Videre tenementum illud. So that the jurors where the Land is, shall see the Land, and the jurors in the other County shall see the Pool where the Nusance is done.

And moreover he shall say in the Writ Et nomina illorum imbreviar. Et sum. eos per bonos sum. quod sint coram dilectis & fidelibus nostris R. & F. & his quos sibi associarerimus ad certos dies, & locum in confinio com. prad. quos idem, &c. parati, &c.

And the form of the Patent is fuch:

Rex dilectis, &c. Sciatis quod constituimus vos Justiciarios M ad aff.capiend. quam B. arrainavit coram vobis per brevia nostra versus N. de quodam stagno exaltato in C. in com. S. ad nocumentum liberi tenementi sui in L.in Comitatu H. & ideo &c.quod ad certos, &c. in confinio com. præd. quos ad hoc provideritis, affisamillam capiatis, factur quod ad justiciam pertinet, salvis, &c. Mandavimus enim Vic. nostris com. præd. quod ad cereos diem & locum in confinio com.præd.quos ei scire fac.assifam illam coram vobis venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes, Tefte, &c.

And a man shall have the like Writ, If a man have a way to N his Land, or House, and another stop the way, he shall have an Assiste of Nusance for that stopping; and if the way be in one County, and the Land to which the way is, in another Coun-25. It shall ty, Then he shall have two Writs of Assife of Nusance, to each Le brought County one, and a fatent made to certain persons, as is afore-

in Confine faid; and the form of the Writ is fuch:

Rex, &c. Queftus eft nob's A. quod B. injufte & fine judicio arctavit quandam viam in B. in com. tuo, ad nocumentum liberi tenementi sui in C. in com. H. post primam, &c. & interim fac. 12.

&c. videre viam, & nomina, &c. Et sum. &c.

And unto the Sheriff where the Land is to which the way belongeth, the Writ is : Quare arctavit quandam viamin B. in com. C.ad nocumentum liberi tenementi sue in S.in com. tuo post primam, &c. Et ideo tibi pracipimus, &c. videre tenement. & nomina eorum imbrev. & sum &c.ad certos, &c. in confinio com. præd. quos idem, &c. and the Patent is fuch :

Rex dilectis, &c. Sciatis, &c. ad aff. capiend. quam,&c. per brevia noft.&c.de quadam via arctat.in B.in Comitatu Bedford.ad nocumentum, &c.in C.in Comitatu Hunt & ideo &c. (ut supra.)

And a man shall have a Writ of Affife, Quare injuste & O fine judicio levavit vel prostravit quoddam fossatum in N. ad nocument. liberi tenementi sui in N. vel levavit, vel prostravit, vel exaltavit, vel deexaltavit quoddam stagnum, &c. vel ob-Struxit,

21 E.3.32. 20 E.3.18. 16 E. 3. Fitz. Nufance 3. Ve.11 H. 4.

Comitat ns,

structi, vel arctavit quandam viam in N. ad nocument. &c. vel levavit, vel prostravit quandam sepem in N. ad nocument. &c. vel divert. cursum aqua in N. ad nocument. liber. tenemen. sui in B. post primam transspetat. &c. (ut in assista de communia pastura usque ibi) de visn. illo videre sossat, illud, stagnum illud, sepem illam, viam illam, cursum aqua illius, & tenement. & nomin. eorum imbreviari & sum. &c. (ut supra in com. pastura) and the form of the Patent is:

Rex dilectis, &c. Sciatis,&c. ad assistancapiend.quam A.&c. 48 E.3.17. versus B. de quodam fossato levato vel prostrato in N. vel de quodam fossato vel deexaltato in N. vel de quodam stagno levato vel prostrato in N. vel de quadam sepe levata vel prostrata in N. vel de quadam via arctata vel obstructa in N. de cursu cu-A justamaqua diverso in N. Et ideo vobis mandamus,&c (utsupra.)

And for what an Affife of Nusance lyeth, appeareth by

theie Verses.

fatum, num, s, a, Fof stag sepe vi diversi cursus aquarum, i.terminari coram Justic. assistari in Banco Poscunt assisam: mercatum, seria, bancum.

And it appeareth by these Verses, to set up a Fair or a Market unto the Nusance of another Fair or Market, that he unto whose Nusance that Fair or Market is set up, shall IT H. 447. have a writ for so doing returnable into the Kings Bench:

and the writ shall be in such form :

Rex Vic.&c. Si A. feceret,&c. tunc sum. &cc. P. quod sit coram Justic.nostris apud west.&c.ostens. quare levavit quoddam mercatum vel quandam feriam in I.ad nocumentyn liberi mercati, vel liberæ feriæ ipsius A. in eadem villa, vet in alia post primam transfretationem, &c. ut dicit,& habeas ibi sum. & hoc breve.

There is also another form of writ for the same which is

a Quod permittat, which is such :

Rex Vic. &c. Pracipimus P. qd. juste, &c. permittat Episcopum Lincoln. prosternere quoddam mercatum in uppingham quoa P. de M. pater præd. P. cujus hares ipse est, in juste, &c. levavit ad nocument. tiheri mercati C. nuper Episcopi Lincoln. prædecess. præd. Episcopi in Luddington, ut dicit, & nis secerit, & præd. Episcop. secrit te securum, &c. tunc sum. præd. P. quod sit, &c. osten. quare, &c.

And that Writ was granted by the chief Justice and Clerks of the Chancery, by which it seemeth, that a man may disfurb another to have or keep any Fair or Market unto the Nusance

of his Fair or Market.

Register,

199.

## Writs of Nusance which are Vicontiel.

Rrits of Nusance which are vicontiel, are those which By the Statute of 6 R. do appear by the Verses following, 2. the Plainges lendinum rica gultum tiff may Fab fur porta, domus, vir choose to murus, ovile, have it before the Ju-

Et Pons, tradantur hee vicecomitibus.

flices, or the And the form of the Writ is fuch : Rex Vic. &c. Queft. eft Sheriff, Re- nobis A. de B. qd. B.injufte levavit vel proftravit quandam dom. gifter. 199. vel obstruxit quendam gurgitem in N. ad nocument.&c. in eadem villa, vel in alia post prim.transfretationem, &c. in Vasc. Et ideo tibi pracipimus, quod loquelam illam audias, & postea eam inde juste deduci fac. ne amplius inde clamorem audiamus pro defectu justitia.

> After the same manner are Writs, de ovili, porta, virgulto, C. molerdino, Latrina & similibus Locatis vel prostratis. those writs may be removed at the suit of the Plaintiff or Defendant out of the County into the Common Pleas by a Pone, with cause shewed in the writ, as in a Replevin of his Cattel;

and the Pone is fuch:

Rex Vic. &c. Pone ad petitionem petentis loquelam quæ est in com. tuo per breve nostrum inter A. & B. de quadam domo levat. vel prostrat. in C. per ipsum B. injuste levat. vel totalit. prostrat.

ut dic. & sum. &c. ut in pone de averiis.

And the Rule in the Register is, That if he who erected or throweth down a house, wall, or the like, dieth, that he to whose Nusance it is, or his Heir, shall have a Quod permittat against his Heir who did the Nusance, which writs are amongst the writs of Quod permittat.

And a man shall have an Affife of Nusance for building of a D 18 E.3.22. House higher than his House, and so near his, that the rain Nusance 1. which falleth upon that house, falleth upon the Plaintiffs house.

And a man thall not have an Affise of Nusance of a way, E 4 E.3.Fitz. if it be not appendant or appurtenant to his Freehold, as if a Nufance 8. man build a House over the way which I have to my House, 46 E.3.23. or to the Church, I shall have an Assign of Nusance.

And in a writ of Nusance, the Defendant shall have the F 50 E.3.12. View, and shall be essoyned; and if afterwards he make default, a distress shall be awarded against him for to answer, &c. and not fave his default, P. 42. E. 3. 9.

And if a man levy a Nusance unto the House of another G [185] who hath therein an Estate but for term of years, then he shall not have an Assise of Nu ance, but an Action upon the

Case

E

3. Fitz. Aff.

Case against him, because he hath no Freehold: but yet it feemeth, he may enter and abate the Nusance.

And if a writ of Nusance be removed out of the County, and the Sheriff return, that the Defendant hath not any thing, &c. the party shall have Attachment, Diffress, and no other But his process,&c. because it toucheth Freehold. But in an Assis of Lessee shall Nusance; the process is as in Assis of Novel Disseisin.

And the Parishioners may pull down a wall which is set up 437. to their Nusance in their way to the Church, qd.ve.6.E. 2. And in an Affife of Nusance he may in his Plea shew the

Nusance to be divers Freeholds.

And if the ways be straightned, or the Allies or Lanes in any Town, City or Borough Corporate be filled with filth or dung, or fuch things by which means infection may increase, then he who will sue may procure such writ to have

them cleansed and made clean; and the writ is such:

Rex Majori do Ballivis suis Oxon. salutem. Quia ex testimonio accipimus fide digno, quod per fimos & fimaria, necnon porcarias & frequent. access porcorum, ac plures alias fæditates, que in viis & venellis villa pradict. & suburb. ejusdem existunt, aer ibidem in tantum corrumpit. & inficit. quod magistris & scholaribus in eadem commorant. & aliis ibidem conversantibus & transeuntibus horror. abhominabilis incutitur, commoditas salubris aeris impeditur, status hominum graviter læditur, alieg; intolerabiles incommoditates, & quamplurima discrimina ex corrupt. bujusmodi provenire noscient. in magistror. et scholarum prædict. & aliorum ibidem conversant. & transeunt. nocument. & vitæ suum periculum manifestum. Nos nolentes lujusmodi d fectus enormes, & intolerabiles ibidem ulterius sustiner. Vobis pracipimus, quod omnes vicos & venellos in villa pradict. & ejus suburb. de fimis & fimariis, ac aliis fæditatibus præd. mundari, & mundatos imposterun conservari sine dilat. aliqua faciatis, neper corruptiones aut fæditates præd. damnum seu periculum aliquibus in vestri defect. eveniat in futurum per quod ad vos tanquam ad mandati nostri contemptores graviter capere debeamus, Tefte, &c.

And upon that he shall have an Alias a Pluries, and Attachment, if they do not cleanse them,&c. But for Villages in the County which are not corporate, such writ doth not

lye.

#### Writ de Association in Assile, and of Writs de Si non omnes.

A Writ of Association is a Patent made to one or more, E when an Assis of Novel Disseisin, Or Certificate upon Assis 206. Motion, or the Plaintist may sue to have other persons associated unto the Justices of Assis to take that Assis; and the omnes gene-form of the Writor Patent is such:

is entred of Record, and remains with the Justices for their Warrant to take other Assistand the special, Si nun omnes, is annexed to the Record, and sent as parcel.

Rex dilectis & fidelibus suis C. & D. Vel dilecto & fideli Juo F. Jal. Sciatis quod affociavimus vos vel alterum vestrum, vel vos dilect. & fidelibus nostris A. B. & G. ad aff. novæ diff. capiend. quam F. arrainavit coram praf. A. B. & G. per bre. nostrum versus H. de ten. in N. ita tamen quod si ad certos diem & locum quos iidem A. B. & G. ad hoc providerint vel alterum vestrum vel vos adesse contigerit, tunc vos vel alterum vestrum vel vos ad hoc in socios vel in socium ad nittant, alioquin iidem A.B. & G. non expectata prafentia vestra vel alterius vestr'. vel vestra, ad caption. illius aff. procedant. Et ideo vobis mandamus quod vos vel alter vestrum vel vos captioni affillius una cum præf, A.B. G.intendat.in forma præd facturi inde quod ad justitiam pertin. secundum legem & consiregni nostri: salvis nobis amerciamentis inde provenient. Mandam, enim eisdem A.B.& G.quod vos vel alterum vestrum vel vos ad hos in socios vel in socium admittant, sicut præd.est. In cujus rei testim. has literas, &c.

And upon that Patent of Afficiation the King shall send his Writ unto the suffices of Assise, commanding them thereby to admit him or them, &c. and the Writ is

Dyer 310. fuch:

See for the exposition

of (alter)

L.5 E. 4.11.

Br. Affife

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Rex dilect. & fidelibus suis A.B. & G. sal. Sciatis quod associavimus vobis dilect. & fideles nostros G. & D. vel alterum ipsorum, Vel sic, dilect. & fidel. nostrum F. ad ass. novæ diss. capiend. quod E. arrainavit coram vobis per bre. nostrum versus H. & alios in brevi nostro originali content. detenement. in N. vel de commun. pasturæ in N. ita tamen quod si ad certum diem & locum, quos ad hoc provideritis, ipsos C. & D. vel alterum ipsorum: Vel sic, ipsum F. ad hoc in socios vel in socium admitt. alioqu. vos non expectata presentia aprum C. & D. vel alterius ipsorum: Vel sic, vel ipsius F. ad captionem illius ass. procedat. Et ideo vobis mandamus,

Se mon of Association in The Oyer et Torminer quod Jups p243: 244: 245: quod ipsos C & D vel alterum ipsorum: Vel sic, vel ipsum F ad boc in socios vel in socium admitt.in sorm. præd. Mandavimus enimeisch. & D, quod ipsi vel eorum alt. Vel sic, vel idem F quod una vobiscum ad hoc intendant vel intendat, sicut præditt. est. Teste, &c.

And if several Assiss, or Certificates of Assiss be sued before several Justices in one County, for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Justices to take all Assiss or Certificates, and Juries which are to be taken in the same County, the King may make an

Affociation to the Justices new assigned; thus:

Rex dilect. fidel. suis W de D, R de A, & R de P, salut. Sciatis quod cum constituerimus vos Justic. nostros ad omnes assinuat. & certif. coram quibuscung; Just. nostros per brevia nostra in com. Linc. arrainatas capiend. Et posmod. vobis mandaverimus, quod si vos omnes cap. assignitatarum, & certif. prad. commode interesse non possiti, tunc duo vestrum, quos prasentes esse contigerit, ad caption. earundem assignitatarum, & certif. secund. legem & consuet. regni nostri procederitis, associavimus vobis dilect. & fidel. nostr. Aad assignitatis & certif. prad. una vobiscum capienditat amen quod si ad cert. dies & loca, quos vos vel duo vestra aboc provideritis, issum A adesse contigerit, tunc vos vel duo vestrum insum A in socium admittat. ali oquin vos vel duo vestrum non expectat. prasentia ipsius A ad caption. ass. juratarum & certif. predict. procedatis, & ideo, & c. mandamus, & c.

And a Patent made to him who shall be Associate, reciting the Patent made to the Justices, and the Writ of Sinon omnes, and then shall say, Associations vos, &c. And the

form of the Writ is fuch:

Rex dilect. & fidel. suo A salut. Sciatis quod cum constituerimus dilect. & fidel.nostros W de D,R de A, & R de P Just. nostros ad omnes aff.jurat. do certific. coram quibascung; Justic. nostris per brevia nostra in com.Linc.arrain.capiend. & postmod. eisdem W de D.R. & R mandavimus quod si ipsi omnes captioni aff. jurat. & certif. præd. commode intereffe non poffint, tunc duo corum, quos tunc adeffe contigerit ad captionem earundem all jurat. o certif. secund. legem o consuet. regn. nostri procederent, affociavimus vos praf. W, R, & R, & duobus eorum ad aff. jurat. & certif. præd.in com.prædiff.capiend. ita tamen quod si ad certos dies & loca quos iidem W, R & R vel duo eorum ad hoc providerint, vos adesse contigerit, tunc ipsi vel duo eor. vos ad hoc in socium admittant, alioquiniidem W,R & R, vel duo eorum non expectata præsentia eorum, ad caption. earundem aff. jurat. & certif. prædict. proced. & ideo vobis mandam. quod caption. aff. jur. & certif. præd.una cum præf. W, R

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& R. vel duobus eor. intendatis in form.præd. facturi, &c.salvis; &c. Mandamus enim eisdem W. R. & R. quod ipsi vel duo eor. vos ad hoc in socium admittant, sicut præd. est. In cujus rei, &c. has literas nostras fieri fecimus paten. Teste, &c.

F

And afterwards when the King hath made his Juftices thA I. s.E.4. 111. Br. Aff. Affife by Letters Patents; and by other Letters Patents ha 386. affociated unto them another person, yet he is used afterwards to make other Letters Patents, as well unto the Justices of Affife, as to those whom he hath affociated unto them, that

if they all do not come at one time, to take those Affises, Juries, and Certificates, that then those who do come shall take the same Assises, Juries, and Certificates: and that Patent is · called a Si non omnes: and the form of the Patent is fuch:

Rex dilectis & fidel. suis W. de D. R. de A. & R. de P. & A. de B. salut. Cum constituerimus vos præf. W. R. & R. Justiciar. nostros ad omnes aff. &c. (usq; ibi) arrain. capiend. & pastmod. vobis præf. W. R. & R. monstraverimus, quod si vos omnes, &c. procederitis subsequen. quod associamus vobis & duobus vestrum præf. A. ad ass. jurat. & certific. pr.ed. in com.præd. capiend.vobis mandam.quod fi vos omnes captioni aff. juratar.& certific. prad. commode interesse non possitis, tunc tres vel duo vestrum, quorum alterum vestrum vospræf. W. R. & R. unum esse volumus, ad captionem earund. aff. &c. fecundum legem & conf. regni nostri procedatis, &c. Teste, &c.

And these three Patents next before are Commonly made R when any Affife is fued; as one to the Justices of Affife, and another Patent to the Clerk of the Affifes of Affociation, and the Patent of Si non omnes, as well made to the Ju-

flices and the Clerk of the Affifes together.

And if the King make his Justices of Assise in any County, C and afterwards he maketh an affociation to them, and a Patent of Si non omnes, &c. And afterwards divers Affifes or Certificates of Aifise remain before them not determined. King at the next Affifes may make a new Commission unto other Justices to take all those Affiles and Certificates, and may make a new affociation unto them by another Patent, and a Si non omnes also directed unto them.

But a general Patent of Affife to take all Affifes and Juries, &c. and affociation lyeth. But M. 32. H. 6. it is holden, that an affociation after another affociation allowed and admitted doth not lye, nor that the Justices then do not admit other affociation in that Writ afterwards, so long as that Writ and Commission stands in force.

But in a special Assis no Association shall be made as it is E holden the same year. M. 32. H.6. for he hath not in the Writ

\$2 H.6.10.

J. S. E. 4. Br. Affife 386.

Writ these words. Et his quos sibi associavimus. But the Writ is directed to the Sheriff without those words in the Writ, nor those words are not in the Patent made to the Justices of that special Assise.

But if those words be in the Writ, and in the Patent made to the Juffices, then it feemeth an Affociation shall be made in that special Affile, as in other. And it appeareth in the Register, That other allociation lyeth after allociation in one Writ.

And upon a new Committion made to other Justices, the old Juffices of Affife shall deliver their Records of the Affife da Jun 2492 unto the new Justices by Indenture, upon a Writ directed to 246 when he them to deliver the Records.

And a man may fue a Patent of affociation for feveral Affi-

fes, and the form of the Writ is fuch:

Associavimus vos, vel alterum vestrum, &c. ad Ass.no.diss.capiend. quam A. arrainavit cor.præf.&c. de tenementis in N. & ad aff.no.diff.capiend.quam C.arrain.cor.eifd'.&c. versus præf. B. de tenementis in eadem villa, Ita tamen quod fi, &c.

And if the King make two men his Justices of Affise in one County, and afterwards one of them is elsewhere in the Kings Service, fo that he cannot intend to take those Affises or Juries, then the King by his Patent may make another man Juflice in his Room, to take those Assises and Juries, and that Patent is in the nature of an Affociation; and the form of the Writis fuch:

Rex dilecto & fideli suo A. salutem. Sciatis ad. cum nuper constituer.vos & dilect. & fidelem nostrum G. Just.nostr. ad omnes ass. juratas, & certific.cor.quibusc. Justiciar. nostris per brevia nostra in Comitatu L. arrain. capiend. acpræf. G. quibusd. obsequiis nostris de mandato nostro alibi intendat, per qd. captioni earund. assisar, juratar. & certificar. vacare non potest, ut accepimus, loco ipsins G. Yet he is constituim.dilect. o fidel.nostr. W. Justic.nostr. ad assisas, juratas, Judge be-& certific.præd.una vobisc.capiend. Et ideo vobis mandamus, qd. fore they ipsum W.loco ipsius G.ad hoc in socium admittatis in forma præd. by Mark-Mandamus enimeidem W. quod loco ipsius G. una vobiscum ad hoc ham, L. s. E. intendat, &c.

And a Patent shall be made to him who shall be associate Aff. 386.

unto them in the place of G. which shall be such:

Rex dilecto & fideli suo W. salutem. Sciatis ad. cum nuper constituimus dilectos & fideles nostros A.& G. Fustic.nostros adomnes assis.&c. (ut supra usq;ibi) ut accepimus, loco ipsius G. consiituimus vos Juftic.nostr.ad aff.jurat. o certific.præd.una cum præf. A.capiend. Et ideo vobis mandamus, qd. loco ipsius G.cum præf. A. ad hoc intendat.informa præd.facturi.&c.salvis,&c.Mandavimus enimeidem R.qd.vos loco ipsius G.ad hoc in socium admittat, sicut pradeft. In cujus, &c.

form's

4. 111. Br.

of Association unto another to associate him and the two, in B the room of him who is dead, and a close Writ shall be directed to the two Justices who are alive to admit him, &c. and it appeareth by the Writ, that if the King maketh three Justices to take Assistand make them a Patent of Si non omness, that if one of them dieth, yet the other two may proceed; and the Patent is such:

L.5E.4.111. Br. Affife 286.

Rex dilecto & fideli suo I de O, salutem. Sciatis quod cum nuper constituerimus dilectos & fideles nostros G, I & S Justic. nostr.ad onnes ass. jurat. & certific. coram quibuscunque Justic. nostr.per brevia nostras in Comitatu S,&c. arrain.capiend.ac post mortem præd.S diversass. jurat. & certific. coram præfat. I, & I arrain.existant, nos certis de causes constituimus vos Justic. nostr. tam ad omnes ass. jurat. & certific.coram præd.I, I & S,&postmodo coram eisdem I, & I quam ante coram quibuscunq; Justic. nostr. in com. præd. arrain. una cum eisdem I & I capiend. Et ideo vobis mandamus, quod ad ass. jurat. & certific. una cum præst.I & I capiend. attendat.in sorma prædict sact. & cinstituis. Mandamus enim prædict. I & I, quod vos ad boc in socium admitt. sicut præd. est.

And a close writ shall be directed to the Justices to admit G

the faid Justice w. into their Society.

And the King may make affociation in Juries as well in Affiles, as also in Attaints. And if the King make a Commission to take an attaint or other Jury, and an Association in the same, and after one of the Justices dieth, the King may make a new association in the same Writ, and so he may make one association after another in the same Writ, as

appeareth by the Register; and the Writ is such:

Rex dilect. &c. I de M, R de M, & I de F. falutem. Cum nuper constituissemus W de O, & vos præfat. I de M, & R 74ftic. noftr. ad jurat. 24 milit. capiend. quam R arrain. coram præfat. W, & vobis præf. I de M, & R per breve noftr. versus P ad convincend. jurator. aff.no.diff.que inter ipfum P. & praf. R fum.fuit, & capta per breve nostru apud H coram præf.W, & vobis præf.R de tenem.in S in com. N, & postmodo per breve nostr. affociaver.vobis praf. I de M, & R vos præf I de F ad omnes aff. jurat. &c.in dicto com. arrain. una cum præf. W, & vobis cum præf. I de M, & R vel duobus vestru capiend. of jurat.ill. coram præf. W,& vobis praf. R, & I de F virtute affociation. prad. ufque ad caption. ejufdem extiterit per placitata, ac idem W jam diem clausit.extrem.loco ipsius W constituimus dilect. & fidel. nostr. Bad jurat. illam una vobifcum capiend. Vobis mandamus, qd. præf.B loco ipsius W ad boc admittat. & ad jurat. illam capiend. una cum apjo procedatis secundum legem & consuetudinem regni

regni nostri Mandamus enim præfat. B, quod una vobifcum ad boc intend. ficut prædictum est.

And thereupon another Patent shall be made to the said Furby 2 H. B. of association as before in other Cases.

And an affociation may be made unto the Sheriff upon a Officer, writ of Rediffeifin directed to him as well as it may be upon Commission an affise of Novel diff. as appeareth by the Register; which ner in this v. rit was awarded by w. de Hartoston.

A And although the affife be discontinued for not coming 12 H.4.19. of the Justices, &c. yet when the Reattachment is sued, the 20. writs of affociation, and of Sinho ownes stand in force; and L.5.E.4.11 a Reattachment shall or may be sued to revive those affises, Br. Affice altho there be several adjournments of the affises, yet the affises, as 15.Br. Affice fociations and writs of Sinon ownes shall serve for all the Affises, 196.

# Writ of Rediffeifin.

The Writ of Rediffeifin lyeth, where a man doth recover by Affile of Novel Diffeifin Land, Rent, or Common, and the like, and is put in possession thereof by Verdick, and afterwards he is diffeised of the same Land, Rent, or Common by him by whom he was diffeised before. Then he shall have this writ upon the Stat. of Merton cap. 3. and the form of the writ is such:

Rex Vic. &c. Monstraver. nobis A. & B. uxor ejus, quod cum R. quondam vir ipfius B. & ipfa B. in Curia nostra coram Justic. nostr. ultimo itinerantibus abud N. in Comitatu tuo. Vel fic, coram dilect. & fidelib. nostr. H. & K. Justit. nostr. ad aff. in Comitatu pred. capiend. affign. Vel fic, fi Juftic. mort. fuer. coram H. & sociis suis nuper Fastic. nostr. ad affif. in Comitatu præd. capiend. affign. apud N, recuperaffent feifin. suam versus S. de viginti acr. terra, & decem solidat. reddit. cum pertin. in K. pro recognit. affife nove diff. inter eos, &c. Vel fic, interpraf. A.B. & S. capt. prafat. S. ipfos A. & B. de præd. terra & reditu. Vel fic, de una acra terre de terra præd. iterum injuste disseisivit : Et ideo tibi præcipimus, quod assumpt. tecum custodib. placitorum corone nostre, & 12 tam militib. quam aliis liberis & legalib. hominib. de Comitatu tuo de illis qui in prima jurata fuer. quam aliis, in propria persona tua acced. ad prad. terram & tenementun, unde reddit inde provenit, & per corum facramentum diligent. inde fac inquist. Et fi ipfos A. & B. perpræfat. S. de præd. terra & reddita iterum injuste disseisitos inveneris, tunc ipsum S. capias & in prisona nostra salvo custodiri fac. ita quod à prisona illa nullo modo deliberetur fine mandato nostro Speciali : & ipsos A. & B.de pr.ed. terra, & redditu refeifir. & damna fuz in duplum, que occasione

illius rediffeis. Suftinuer. per facramentum præd. 12. taxari, & de terris & catall. præd. S. in balliva tua fine dilatione fier. & eisdem A. & B.habere fac.juxta formam Statuti de hujusmodi rediffeif.provif.Et scire fac.praf.S.& D. qui terram illam nunc tenet, quod inquifit. illi faciend. interfit, fi fibi viderit expedire,

f 154: 6: Air. And by that writ appeareth, That a man shall have a Re- D diffeisin against the Tenant, if he recover by affise of Novel Diffeisin before Justices in Eyre, or before Justices of Affise; and fo if he recover in Affile of Novel Diff. in the Kings Bench or Common Pleas, if he be rediffeised, he shall have that writ.

If Husband and Wife be diffeifed, and recover by affife, and E the Husband dieth, and the wife taketh another husband, and they be diffeifed again, by the Register they shall have a Writ of Rediffeifin, although the husband were not diffeifed before; and the writ willeth that the Sheriff enquire whether they were diffeifed before, and so the husband was not : but that is not material, because it is the Right of the wife, and she was diffeised before. But if the wife lose in the Affise of Novel Diff. and afterwards take husband, and they rediffere the Plaintiff, he shall not have a writ of Redisseisin, quod ve. H.9. H.4.

And also a Rediffeifin lyeth against him who committed the F Rediffeifin, and against another who was not Disseifor, if he be

Tenant of the Land.

And also if a man recover Land by Assiste of Novel Dist. G. and after is rediffeifed of parcel of the same, he shall have a

Writ of Rediffeisin.

And in a Rediffeisin against husband and wife, the Writ H shall be thus in the end. Et idem A. damna sua in duplum que occasione illius rediff. sustinuit de terris ipsorum B. & S. & catallis ipfius B. in ball. tur, because the wife hath not any Chattel.

And if the Sheriff will not execute the writ of Rediffeifin, I he shall have an Alias and a Pluries directed to him, and if he then do it not, he shall have an Attachment against him to the

Coroners,&c. and upon the same, diffres infinite.

And it appeareth in the Register, That a man shall havek a Writ of Affociation in a Rediffeisin, and the writ is such:

Rex Vic. &c. Sciatis ad. cum nuper ad profecut. N. nobis Suggerent. ipsum in Curia nostra coram, &c. apud K. per breve nostrum recuperas. seisinam suam versus S. &c. recitando totum breve (ufq; ibi) si sibi viderit expedire, associavimus tibi dilect. & fidel. nostrum R. ad præmis. tecum faciend. & explend. ita tamen, quod fi ad cert. diem quem ad boc provideritis, ipfum K. adef. contigerit, tunc ipsum ad boc in socium admitt. alioquin tu non expectata præfentia ipfius R. ad præmif. faciend. explend. proced. proced. Et ideo tibi præcip, quod ipfum R. ad hoc in focium admitt. in forma præd.Mandavimus enim eidem R.quod ad prænif. tecum faciend.& explend.intend.ficut prædictum est.

And by the Register, the Writ directed to the Sheriff shall be close, as also the other Writ directed unto him who is associated to him, and yet the same is in its nature a Patent.

And if a man recover by Affise of Novel Diffeisin Common of pafture, or other profit apprender in the soil of another; or any Office, or Corody; if he be rediffeised, he shall have a Rediffeisin: and the writ shall be such:

Rex Vic. &cc. Monstravit nobis A. quod cum inse in Curia nostra coram dilicti. O fidel. nostr. W. & socias suis Justic.nostra ad assis, &cc. assis no product nostra pastur. in S. qua pertinet ad liberum tenementam suum in eadem villa, per recogn. assis nove dissi inde inter eos capt. pred. I. pres. A. de præd.communia iterum injuste disseivit. Et ideo, &cc. acced. ad pasturam illam & per eorum sacramentum, &c. de rationabil. estover sic recuperassis seism. suam versus I. de rationabil. estover sic recuperassis milliba. crobosci cum pertin. in W. quæ pertinent ad liberum tenementum suum in eadem per recogn. assis &cc.

And if a man recover by Affile of Novel Diffetin any Land or Tenement before the Bailiffs of any Liberty, where they demand Conniance of Pleas before Justices of Affile, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he be rediffeted of the same Land, then he shall have a writ of Rediffeting and the writ shall be such:

Rex Vic. Berks salutem. Monstravit A. quod cum ipse nuper arrainas quandam ass. no. diss. cor. dilect. & stdelib. nostris I. & socia, &c. assign. per breve nostr. versus P. de duobus pedibus terræ in longitudine, & uno pede terræ in latitudine cum pertin. in W. quæ quidem assign per eost. Justic. in Cur. Abbat. 4e Reding, juxta libertates eidem Abbati per cartas progenitorum nostror. quondam regum Angliæ & consirmat. nostram concess. cor. ball. ejust. Abbat. returnata suit placitard. 2e idem A. sessionas suam de terra prædursur præf. E. in ead. cur recuperas set præd. &c. it in primo brevi.

And also a man shall have a Redissein upon a recovery in Assign of Nusance, de stagno injuste levat. Eco or de cursuaque dia verso, or de via artata velobstrutta; and the form of the writ is such:

Rex Vic. &c. Monstravit nobis A. &c. (usg.ibi) a fign.
arrainaver. quandam affism versus B. per breve nostrain de quadam stagno injuste levato in N. ad nocumentum liberitenement sui in K. & per recognit, ej astem assiste inde intereos apud E.

11 2

capt. coram eisdem Justic. disrationavit stagnum illud per pref. B. levatum esse prosternend. præd. B. stagn im illud iterum injuste, & sine judicio levavit: & quia hoc injustum est & manifestum contra pacem nostram: Tibi precipimus, quod assumptis tecum, &cc. (usque ibi) accedas ad stagnum illud & tenementum, & per corum sacramentum diligenter inde fac. inquisition. Et si per inquisitionem illam inveneris quod prædict. stagnum illud tirrum insuste levaverit, tunc ipsum B.capias, &c. (usq. ibi) speciali, & stagnum illud sine dilatione prosterni, & eidem A.damna sua ad duptum, quæ occasione illeus redisseijm. sustinuit, &c. (usq. ibi)/ine dilatione sieri habere sac. juxta som ækcut supra.

And the like Writs are in the Register of Redisleisin, for the C mis-turning of a Mill, or of a Way, or of an Office, and the like.

And if the Sheriff do deliver any such without the special Command of the King, who are convict of such Redisferins, he shall be grievously amerced, and notwithstanding those who are so delivered, shall be also grievously punished &c. by the Statute of Marlebridge, cap. 8.

And by the Statute of neffm. 2.cap. 26. he who recovereth in a Rediffeifin, shall recover double damages; and the Defendants shall not be bailed by a common writtend by the same Statute is given a Writ of Post Diffeifin, in which writ he shall also recover double damages against the Defendant.

And if a man do recover by Redisseisin, and afterwards is D discissed again by himby whom the first Redisseisin was before, he shall have a new Redisseisin; and so one Redisseisin after another every time he is redisseised.

And a Rediffeifin shall be maintainable against any of the E

Diffeifors.

And if a man recover Land by Affife of Novel Diffeifin un-F to which a Common is appendant, &c. and after he is diffeifed of the Common again, he shall have a Rediffeifin, &c.

And if a man fue a Writ of Droit close, and make Protesta-G tion in the nature of assisted of Novel Dist, and recover in that writ, and after he is redissested, he shall not have a Redissession: for that writ doth not lye upon an Assiste at the Common

Law, M. 14. E. 3.

And if all the Jurors in the affife be dead but one, and afterwards he who recovered is rediffeifed, &c. it is a question whether he shall have a Rediffeifin, because that the Statute is, Per Primos Juratores & alsos, &c. which he debated in H. 8. 5. But it seemeth that the Statute makes the Law, and because it is a penal Statute, it shall be taken strictly; and therefore if all the Jurors be dead but one, that he shall not have a Rediffeifin, because he cannot be tryed by the former Jurors:

for one Juror is not a sufficient witness himself, to say that it is a Rediffeifin of the same Tenements; and therefore it seemeth there ought to be two Jurors to testifie the same.

And Tenant by Statute Merchant or Staple shall have an affise of Novel Diff. if he be ousled; and also a Redisseisin if

he be redisseised.

And so Tenant by Elegit shall have an assis of Novel distand a Redisseis in it he be ousted, by the Stat. of westm. 2 cap. 13.

# Writ of Post Diffeifin.

THE Writ of Post Disseifin is given by the Statute of west. 2. cap. 26. and lieth where a man recovereth Lands or Tenements by a Pracipe quod reddat, by default or reddition, and afterwards he is oufted again by him against whom he recovered, &c. Then he shall have that writ of Post diss', and shall recover double damages, and the party shall be punished as he shall be if he were attainted of Redissifin: But if he recover by affife of Mortdauncestor or Juris utrum, or in those actions which pass by Juries and Verdicts, then he shall have this Writ founded upon the Statute of Merton, cap. 3. of Post Disseisin. And that writ shall be directed to the Sheriff as the writ of Rediffeifin shall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, Then he may fue forth an Alias and a Pluries vel dausam nobis significes, &c. and if that do not any thing nor he return a Cause, Then the party may sue an Attachment against the Sheriff directed to the Coroners, 60c. and upon that a Distress: and the form of the Writ of Post Diss is fuch:

Rex Vic. &c. Monstravit nobis A. quod cum ipse in curia nostra coram dilectis & fidelibus nostris W. & sociis suis sustice nostris de bunco apud E. per breve nostrum recuperaset, seisnam suam versus I. de uno mesuag, cum pertin. in S. per considerationem esusdem cur. idem I. prestat. A. de prædicta terra postmodo insuste diseis. Et i deo tibi præcipimus quod assumptis, &c. (ut in breve de redistaxe.) leguibus hominibus de Com. tuo accedas, &c. (usque ivi) de prædicta terra postmodo insuste diseisti. inveneris, tunc ipsum I, &c. (usque ivi) que occasione issuis post diseis. sustinuit, &c. juxta formam statuti Westum. de hujusmodi post diseis sinam provisi, & scire fac. præsat. I quod inquistio, &c.

And in a Post Diss. the Writ shall not say, Tam de illis qui in prima jurata, but in case where he recoveresh by recognisance

of the Affife, or Jury.

And if a man recover Lands or Tenements in value against the vouchee in a Pracipe quod reddat by default, and afterwards that he is put in Execution by the Sheriff, the vouchee doth diffeise him of the same Lands which he so recovered in value, He shall have a Post Diffeisin of that Land so recovered in value against the vouchee; and the Writ is such:

Rex Vis. &c. Monstravit nobis C. quod cum B. Prior de D. nuper in curia nostra coram dilect. & fidel. nostris R. F. & Jociis suis Justiciar. nostris de banco apud Westmonasterium per breve petivisset versus præs.C. septem acr. prati cum pertin. in I. idemque C.R. de S. inde placitoprædict.vocasset ad warrant.ac per defaltam, quam idem R.postea fecit in eadem Cur.considerat.fuisset,quod præd. Prior. recuperaret feifinam fuam verfus præf. C. de præd. placito, quod idem C. haberet de prato prædict. R. de S. ad valentiam predict. feptem acr. prati, cujus quidem confiderationis pratexta feptem acr. prati cum pertin. de prato pradict. R. de S.in G.pr. of. C.per tunc Vic. nostrum Glouc. virtute cujusd. brevis nostri de judic. fibi in bac parte directi affign. fuer prædict. R.de S.prafat C.de pradicto prato fibi (ut pramittitur) affignat. postmodum injuste diffeisivit. Et ideo tibi præcipimus, quod afsumptistecum, &c. 12. tam militibus quam aliis liberis & legalibus hominibus de Com. tuo, in propria, &c. accedas ad prædict. pratumeidem C. affign. & per corum facram. diligenter inde fac. inquifit. Et fi ipfum C.per preditt.R.de præditt. prato præfat.C. affign postmodum injuste difficifinveneris, tunc ipsum R. capias; & in prisona nosira salvo custodir. fac. ita qued à prisona illa nullo modo deliberetur fine mandato nostro speciali, & ipsum C. de prædict. prato sibi asign. reseisiri, & damna sua in duplum, que occasione illius post des. Sustinuit per sacrament. pradiit. 12. taxari, & de terris & catallis pradictis R. in balliva tua fine dilatione fieri, & idem C. habere fac. juxta formam statuti de bujusmodi Post diffeifin.provif. Et scire fac.præfat.R. &c. Tefte, &c.

And if the Defendant make the default at the Scire fa-D cias returned, then the Sheriff shall take the Inquest by default, and the process against the Jury shall be by precept from the Sheriff to his Bailiff, &c. to summon twelve, &c.

And if a man recover in a Scire facias upon a fine, or upon a Recovery had before by default of the Tenant, he shall have a Post Dissein against the Tenant, if he be afterwards ousled of the same Land, quod vv. M. 15.H.7.

And if a man be convict before the Sheriff upon a Redifferien, and Post Dissersion, then he shall not be delivered out of prison without the Kings special Command, and then

he

he ought to fue a Certiorari to remove the Record into the Kings Bench, and there to agree with the King for his Fine. And thereupon he shall have a Writ to the Sheriff to deliver him out of prison; and the form of the Writ to remove the Record is such:

Rex Vic.&c. Ex parte Henrici de D. capti dy detenti in prisona nostra Staff. pro quadam redisseisina per ipsum Isabell.que fuit uxor Ric. de C. de medietate unius mesuag.cum pertin.in C. fact. ut dicit. unde coramte & custod. placitor. coron. nostræ in Com. tuo per inquisitionem inde apud C. per breve nostrum fact. conviet. fuit: Nobis est supplicat. ut cum ipse eidem Isabel. de damn. sibi in bac parte adjudicat. jam sit satisfact. & parat. sit nobiscum finem pro eo quod ad nos pertinet in hac parte, juxta formam statuti de communi consilio regni nostri inde provis. facere: Velimus ipsius deliberationi provider. nos ut eidem H. quod justum suerit inde facere valeamus, volent. super record. & proces. inquisitionis præd. certiorari : Tibi præcipimus, quod si judic. inde reddit.fit tunc record. proceff. inquifit. præd. cum omnibus ea tangent nobis sub sigillo tuo distincte & apert mittas, ita quod, &c. ubicunque, &c. ut ulter. Super hoc fieri fac. quod de jure, &c. faciend. &c. Tefte, &c.

And that Writ of Post Dissellin ought to be brought by those who first recovered, or by some of them, and of the same Land which was recovered, or of part thereof, or against those, or some of them against whom the recovery was.

But if a man recover by a Practive quad reddat, and after he is diffeifed by him against whom he recovered, and the disself of the make Feossment, and taketh back an estate to him and another. He who first recovered shall have a Post Disself in against him and his Joynt tenant, as it seemeth, and he shall be punished by the Scatter if it be found against him.

But if he who loseth the Land by default or Reddition in a Pracipe quod reddat, do after diffeise him who recovered, and maketh a Feoffment in Fee unto another, or for life, it seemeth he who recovered shall have a Post Disseis against him who diffeised him again, although he be not Tenant of the Land; For in a writ of Post Disseis n, The Demandant shall not have Judgment to recover the Land, &c. But the Sheriff shall put and restore the Plaintist to his possession, if he find the disseis, &c. and shall take the Defendant, and keep him in prison until, &c.

And it seemeth, That Non-tenure is no plea, in a writ of Post Diss. for the Desendant, but he ought for to answer the Disseis, &c. when he comes in upon the Scire Ii 4 facias,

Writ of Entrie in the nature of Affife, &c. 424

> facias, &c. And if he make default upon the Scire facias, returned, the Sheriff shall take the Inquest: Tamen Quare.

> Writ of Entrie in the nature of Affife, which is called. Entrie in de Quibus.

A Writ of De quibus which is brought in the place of an C Affife is, where a man is diffeifed of any Lands, Tene-If this Writ ments, or Rents, whereof he hath an estate in fee, then he

be brought may fue that Writ, and the Writisfuch:

9 H. s. 13.

against a Rex Vic. &c. Præc. A, quod juste redd. B unum mesuag. cum Parson, he pertin.in D, quod clamat effe jus & hereditatem fuam, de quo shall not have Aid of idem A injusted fine judicio diffeisivit predict. B post primam the Patron transfret.dom.H. Regis in Vasconiam, oc. ut die. o nisi, oc. and Ordina-And if a man bring a Writ of Diffeifin made to his Anzy.

ceftor, then the Writ is of another form, thus:

Pracipe A quod jufte, &c. redd. B unum meffung. cum pertin. D in D, quod clamat effe jus & hereditatem suan, er de quo idem A injufte & fine judicio diff. C patrem prædict. B, vel alium antecefforem prad. B cujus heres ipfe eft poft primam transfret. domini regis, &c. ut dic. vel fic, per quod clamat, &c. & in quod, oc. nifi per C quod illud ei dimifit, quod injufte E patre, vel pradict. B, oc. post primam, oc.

K

D

And in the Per and Cui thus:

Quod clamat, &c. & in quod, &c. nisi per C cui D illud dimifit, qui inde injufte & fine judicio, &c. pradict. E patrem prad.B cujus hares ipfe eft, vel pradict. B. Jc. post prim. Jc.

And in the Post thus:

Quod clamat, &c. in quod, &c. nis post diffeifin. quam D injufte, &c. fecit E patri vel al. antecef. præd. cujus hæres iple eft, vel præfat. B post primam transfretationem, &c. ut dicit, & unde queritur, &c. Et nifi, &c.

And it appeareth by these Writs, that although he bring a Writ of a Diffeifin made to himself, or of a Diffeifin made to his Ancestors, that in both cases the Writ shall be, Quod

clamat effe jus & hereditatem fuam.

And if Tenant for life, or Tenant in tail be disseised, they E may fue a Writ for Diffeifin de Quibus, oc. but in that Writ A shall not be said , Quod clamat effe jus & hareditat. suam, and in his Count he shall set forth the especial estate,

Andan Abbot, or a Prior, or Mr. of an Hospital, or a F Bishop shall have a Writ de quibus upon a disseifin of their Predecesiors of Lands, Tenements, or Rent, and the Writ shall be such :

nok und e quereher shall be on no world recipe of Entrie my esque but only my enote Int: poply

Pracipe A quod juste, &c. red. Priori de N unum mefuagium quod clam. effe jus Eccles. ipfius Prioris S. Mariæ de N, & in quod idem A non habet ingreff. nifi poft. diff. quam L inde injufte & fine judicio fecit R quondam Priori de N predeceff. præd. Prioris poft primam, &c.ut dic. or unde queritur, &c.

And if it be a rent then thus:

Rex Vic. præcipe I.M quod juste, &c. redd. Priori de C tres folid, reddit.cum pertin. in D, quod clam.effe jus Egclefta toffus Prioris S. Nic. de C. Et de quibus W. D injufta fine judic. diffeifivit W quondam Priorem de C prad. &c.

And the Aunt and the Neece shall joyn in the Writ, upon a Disseisin made to the father of the one, the grandfather

of the other.

And a Writ of Entrie fur diffeisin made unto his Anceftors of a stream lieth, and the Writ shall be, Pracipe quod reddat unum gurgitem, and in his Count he shall alledge the Esplees in taking of Fishes.

And so he shall have a Writ of Entrie in de quibus upon

the diffeifin of a passage, quod ve. H.8 E 3.

And if the Diffeifor enfeoff the King, who enfeoffeth a- 12 E.3.7. 23 nother in Fee, the Diffeitee shall have a Writ of Quibus upon E. 3. Fitz. that Differin against the Kings Feoffee in the Post,&c.

And if Tenant in tail bring a Writ of Quibus upon a Dif- 1 Ma. Dyer feisin made to himself, he may count that he was seised in 101. his Demesn as of freehold, without shewing any particular estate, or how the estate began, or he may count upon the special matter and shew the gift in tail, quod ve.P. 23 H.6.

And a man may have a Writ of Entrie of Quibus, upon a Diffeifin of a common, Quod reddat paftur. ad decem boves,&c.

quod ved.P.4 E.3.

And a man shall not have a Writ of Entrie in the Post, \$4 H.4.10. where he may have it within the degrees, in the Per, or in £.3.70.

If a man disseise the father of a marsh, and maketh the cipe will lie fame meadow, and the father dieth, the Son and heir shall of a marsh have a Writ of de quibus upon a Disseisin made to his father because proof that meadow, and by the writ he shall demand the lands; perly it canby the name of a meadow, and not by the name of a marfh. dred 13 E.3. And so if it be land covered with water, and he is dif-Br.demand.

feised thereof, and the disseisor make it meadow, the dif- 23. 39 H.6. feisee shall have a Writ of Quibus, and by his Writ demand 8.ve. the meadow, and suppose that he was differred of meadow 39 H.6.8. by the Writ, &c.

And so if aman be diffeised of land, and he build a house a Pracipe by upon the same, he shall suppose the disseisin to be of a house, a house. &c. Quare of this.

Yet no Tra-

And the Writ of Quibus upon Disseisin of an Office is such: Rex Vic. &c. Pracipe H. Abb. de Burg. S. Petri, quod jufte, F. &c. reddat B.officium Serjeantie in Abbatia de Burgo S. Petri, & redditum 24. panum, quadragint. lagenar. cervifia, & fex ferculorum cum pertin. in Vill.de Burgo S. Petri, que clamat effe jus & hæreditatem suam, & de quibus idem Abbas injuste & sine judicio diffeif. &c.

And he who cometh in unto any Land by Record, or by F Election, or by Succession, or by Diffeifin, the Writ shall be

brought against such person always in the Post.

# Writ of Dum fuit infra atatem.

Weit of Dum fuit infra atatem lieth; where an Infant G

A maketh a Feoffment in Fee of his Lands, or for life, or a gift in tail, when he cometh of full age, he may have that writ to recover those lands or tenements, which were so aliened by him,&c. And within age, he may enter into the land, and take 39 H. 6. 42. it back again, and by his Entrie, he shall be remitted to his In 46 E. 3. Ancestors right; but yet he shall not maintain that writ, until 34. A Dum fut infra a- he be of full age of 21 years, for the words of the Writ do fo suppose, Dum fuit infra atatem, by which it appeareth that he is admitted of not within age at the time of the writ, &c. & also the Writ is a rent, and fuch; Qui plene etatis est, ut dicit, by which it appeareth that yet by some he ought to be of full age, when that he bringeth that Writ;

the gift is and the Writ is fuch: void, but the delivery of the deed is

not void.

tatem Was

Rex Vic.&c, Pracipe A. quod, &c. redd. B. quiplena atatis eft, H ut dicit, duo mesuagia.&c.que idem B.ci dimist dum infra etatemfuit, ut dicit, &c. Et nift facer. &c. And fo in the Per, In que idem A.non habet ingreff.nife per C. cui præd.B.illa dimifit.And in the Post thus, In quod, &c. nisi post dimis. quam prad.B.dum inf. etat.fuit inde fecer.W. ut dic. munde queritur, onifi, &c. But that clause, Qui plenæ ætatis est, shall not be put in the Writs of Per, Cui, or Post, but only in the first Writ, by Grant made by the Demandant to the Tenant.

And if a man bring this Writ upon the Alienation of his I Ancestors, then this clause; qui plenæ ætatis est, shall not be in the Writ, and yet the Infant shall have a Dum fuit infra etatem of a seifin, and Alienation of his Ancestor during his non-

age, and the writ shall be such:

Pracipe A. quod, &c. redd. B. unum mesuag. cum pertin. quod clam. effe jus, &c. & in quod idem A. non habet ingreff. nisi per C. patrem, vel alium anteces. prædict. B. cujus hæres ipfe est, quod illud ei dimisit dum infra ætatem fuit : Vel fic,

fic, Quod clam. &c. & in quod, &c. nifi per C. cui D. avia predict. B. cujus,&c. dum eadem D. &c. And in the Poft, Quod clam. &c. & in quod, &c. post dimiff. que D. amita,vel confanguinea prædict. B. cujus hæres ipfe eft, dum eadem D. &c. inde

fecit H. ut dic. & unde queritur, &c.

And if two Infants be Joynt-tenants, and they alien the 34 H.6.31. him Land during their non-age, at their full age they ought met 19 H. 645. 33 to fue forth several writs of Dum fuit infra ætatem, because ac.de cmi in their non-age is the cause of the action which is several, for with. the non-age of the one, is not the non-age of the other, nor the alienation of the one, the alienation of the other.

And if the husband and wife alien the wives lands, during Frit gns the non-age of the husband and wife, the wife at her full age 984 after the death of the husband, shall have Dum fuit infia at atom.

for fuch alienation, M.14.E.3.

But if the husband were of full age, and the wife within Try tony herage, and they both alien the wives Lands, and then the husband dieth, it is a question whether the wife shall have a Dum fuit infra atatem, and I conceive that she shall have a Dum fuit infactatem, or acui in vita as the pleafeth, for when they joyn in a Feoffment of the Land, it shall be faid the Feoffment of the wife until she do disagree, for if the husband and wife make a gift in tail, or a leafe for life of the wives Lands rendring rent, if the husband dieth, the reversion is only in the wife, and the may accept the rent, and the fame that bind her and her heirs; and then if she will not accept the rent, but, because she was within age at the time of the Fest, she will bring a Dum fuit infra atatem, it seemeth she shall not be received so to do, for by that suit she affirmeth that she made the feoffment and then it shall not be faid the feoffment of the husband only, but the feoffment of the wife alone after the death of the Husband, if the affirm that to be her feoffment; and by the Dum infra etatem, she doth affirm the same; and that the made the feoffment during the coverture; and on the other fide it may be faid, That the doth not affirm the fame to be a lawful feoffment made by her. And also by the feoffment of the husband, the entry of the wife shall be taken away; but by the feoffment of the wife during her non-age, his entry shall not be taken away: and therefore Quere the Law, &cc.

#### Writ of Cui in vita.

THe Writ of Cui in vita lieth, where the Husband doth A alien in Fee the right of Inheritance of his Wife, or the Freehold of his wife by Feoffment, or grant for life, or in tail; Then after the death of the Husband, the wife shall have Cui in vita contradicere non potuit : And the Writ lieth where the Wife hath an estate for life, or in tail, and the husband alieneth that Estate and title of the wives, then the Wife after his death shall have that Writ.

39 H.6. 38, Prif. contr. ve. 16 H.7,

And if the wife do not bring the Writ during her life, B then if she had an Estate in Feesimple, her Heir shall have a Writ which is called Sur cui in vita, after her death. And if the wife have an Estate in Tail, and her Husband alien, and make a Feoffment of that Estate; then if the wife dieth, her heir shall have a Writ of Formedon in the Descender to recover that Estate, and not a Writ of Sur cui in vita; for those Writs of Cui in vita, and Sur cui in vita, are Writs founded upon the Common Law, and of an Estate in Feefimple; for there was not other Estate at the Common Law which could descend, but a Feefimple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat.

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And so by the common Law. If a man give Lands to one and the Heirs of his body, &c. if he dieth without Heir of his Body, the Lord by the common Law shall have a Formedon in the Reversion of that Estate, for want of issue of him to whom the Gift was made; but yet the Donor shall have an Estate in Feesimple, as I think, and that appeareth by the Statute, which faith, De tenentibus que multoties dan-

of Feoffment, but

A Feme fole tur fub conditione; by which words it appeareth, That the made a Deed Gift had a Condition implied therein; so that it shall revert for want of fuch iffue, and by reason of the Tenure referved,&c. but it doth not appear by the Statute that he always after shall have an Estate tail of other nature than the Estate feifin of the which was by the common La v, and the form of the Writ

Land, after of Cui in vita is fuch:

the took Husband, who delivered the Land to the party to whom the Deed was made; the Feme may have a Cus in vita; because the did not execute the Feoffment by delivery of the Land ; 4 E.z. Fiz. Cui in vita 21.

Plo.Com.29, & 235. 12 E.4 3.

Rex Vic. &c. Pracipe A quod juste, &c. reddat B qua fuit C **uxar** 

uxor Dunum mef.cum pertin.in N. quod clamat effe jus & hæred. suam. Et in quod idem A non habet ingressum nisi per prædict. D quondam virum ipsius B qui illud ei dimisit, cui in ipsa vita (na contradicere non potuit, ut dicit.

And if the hold in frankmarriage, and the husband alien, then the Writ shall be, Quod clamat juseffe & maritag. fuum, & in quodidem A,&c. nisi per C cui prad.D, quond. vir ipsius

B illud, ut supra.

And this Writ of cuiin vita may be in the Per, cui and

Post, and in the Post the Writ shall be:

Et in grod idem A non habet ingressum, nifi post dimissionem, quam pd.D quondam vir ipfius B cui ipfa in vita,&c.non potuit, inde fecit, ut dic. & unde queritur, &c. & nifi, &c. Vel fic, Quod clam. effe jus suum de dono S qui ipsam B inde feoffavit, & in quod,&c.

And if the husband and wife purchase joyntly, and the II Aff. II. husband alieneth all in see and dieth, the Wife shall have 16 H. 7,8,9. Br.Aff. 167.

a Writ in this form:

48 E.3.8. Quod clamat effe jus suum de dono I qui ipsam B, & præd' C 39 H.6.38,

quondam virum suum inde feoffavit, & in quod, &c.

And if she have an estate to her and the heirs of her body, and of the body of her husband begotten, then the Writ is; Quod clamat tener. fibi & hared. de corpore suo, & de corpore pred.D quond.viri sui exeuntibus, ex domissione I. Vel

G fic: quod clamat effe jus suum ex dimissione quam I inde fecit Note the eidem B, o prad. D quondam viro fuo, o hared. ip fius B. and Statute of there the husband shall have a joynt estate with the wife for West. 2. 6.3. the term of her life. extends to

And if the wife claim the Lands in dower, then the Writ give this account, as

shall be:

Quod clamat effe dotem suamex dono D primi viri, vel secundi well for Recover. beviri fai, Et in quod, &c. nifi per præd' C fecundum virum ipfius fore the B vel tertium virum, qui illud ei dimisit.&c. Statute, as

And if the hold for term of life of dimission, then the after. 5 E.z. Cui in vita Writ shall be:

Quod clamat tenere ad vitam suam ex dimissione quam I inde 23. fecit eidem B, & præf. D quond. viro suo ad vitam eorundem B 少 D.

And if the husband and wife lose by default the Wives 2 E.4.13. Lands, after the death of the Husband, she shall have a Cui in vita for to recover those lands so lost by default: but if a Note the man recover by a ceffavit Lands of the wife by default of case of west. the husband and the wife upon a Cesser during the marri- 9 E.4.16. age had betwixt them; if the husband dieth, the Wife shall not have a Cui in vita upon that recovery, quod vi.Tri. 4 E.2.

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8,9.

And if the wife do not bring the Writ during her life, B then if she had an Estate in Feesimple, her Heir shall have a Writ which is called Sur cui in vita, after her death. And if the wife have an Estate in Tail, and her Husband alien, and make a feoffment of that Estate; then if the wife dieth, her heir shall have a Writ of Formedon in the Descender to recover that Estate, and not a Writ of Sur cui in vita; for those Writs of Cui in vita, and Sur cui in vita, are Writs founded upon the Common Law, and of an Estate in Feefimple; for there was not other Estate at the Common Law which could descend, but a Feesimple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat.

And so by the common Law. If a man give Lands to one and the Heirs of his body, &c. if he dieth without Heir of his Body, the Lord by the common Law shall have a Formedon in the Reversion of that Estate, for want of issue of him to whom the Gift was made; but yet the Donor shall have an Estate in Feesimple, as I think, and that appeareth by the Statute, which faith, De tenentibus que multoties dan-A Feme fole tur fub conditione; by which words it appeareth, That the

vert for want of such issue, and by reason of the Tenure

made a Deed Gift had a Condition implied therein; so that it shall reof Feoffment, but referved,&c. but it doth not appear by the Statute that he always after shall have an Estate tail of other nature than the Estate feifin of the which was by the common Lav, and the form of the Writ Land, after of Cui in vita is such:

the took

Husband, who delivered the Land to the party to whom the Deed was made; the Feme may have a Cui in vita; because she did not execute the Feostment by delivery of the Land; 4 E.z. Fitz. Cui in vita 21.

Plo.Com.29, & 235. 12 E.4 3.

Rex Vic. &c. Pracipe A quod jufte, &c. reddat B qua fuit C

uxor Dunum mef.cum pertin.in N, quod clamat effe jus & hæred. suam. Et in quod idem A non habet ingressum nisi per prædict. D quondam virum ipsius B qui illud ei dimisit, cui in ipsa vita sua contradicere non potuit, ut dicit.

And if the hold in frankmarriage, and the husband alien, then the Writ shall be, Quod clamat jus effe & maritag. fuum, de in quodidem A,&c. nisi per C cui prad.D, quond. vir ipsius

B illud, ut supra.

B

And this Writ of cuiin vita may be in the Per, cui and

Post, and in the Post the Writ shall be:

Et in quod idem A non habet ingressum, nisi post dimissionem. quam pd. D quondam vir ipfius B cui ipfa in vita,&c.non potuit, inde fecit, ut dic. & unde queritur, &c. & nifi, &c. Vel fic, Quod clam. effe jus suum de dono S qui ipsam B inde feoffavit, & in quod,&c.

And if the husband and wife purchase joyntly, and the " Aff. II. husband alieneth all in see and dieth, the Wife shall have 16 H.7.8,9.

a Writ in this form:

Quod clamat effe jus suum de dono I qui ipsam B, & præd' C 39 H.6.38,

quondam virum juum inde feoffavit, & in quod, &c.

And if she have an estate to her and the heirs of her body, and of the body of her husband begotten, then the Writ is ; Quod clamat tener.fibi & hæred. de corpore suo, & de corpore pred.D quond.viri sui exeuntibus, ex dimissione I. Vel

G fic: quod clamat effe jus suum ex dimissione quam I inde fecit Note the eidem B, or prad. D quondam viro fuo, or hared. ip fius B. and Statute of there the husband shall have a joynt estate with the wife for West. 2. 6.3. the term of her life.

And if the wife claim the Lands in dower, then the Writ give this

shall be: Quod clamat effe dotem suamex dono D primi viri, vel secundi well for viri fai, Et in quod, &c. nisi per prad' C secundum virum ipseus fore the B vel tertium virum, qui illud ei dimisit.&c.

And if the hold for term of life of dimilion, then the after. 5 E.z.

Writ shall be:

Quod clamat tenere ad vitam suam ex dimissione quam I inde 23. fecit eidem B, & præf. D quond. viro suo ad vitam eorundem B ₾ D.

And if the husband and wife lose by default the Wives 2 E.4.13. Lands, after the death of the Husband, she shall have a Cus in vita for to recover those lands so lost by default: but if a Note the man recover by a ceffavit Lands of the wife by default of case of west. the husband and the wife upon a Cesser during the marri- 9 E.4.16. age had betwixt them; if the husband dieth, the Wife shall not have a Cui in vita upon that recovery, quod vi.Tri. 4 E.2.

48 E.3.8.

extends to

account, as Recover. be-Statute, as

Cui in vita

D

G

I

Cont 1st

p E.4.16. If the husband and wife, and a third person purchase joynt-R the husband ly, and the husband alieneth all in Fee and dieth, the wife as and wife it seemeth shall have a Chi in vita of a moity, being the third lose by default in waste, no the Joyntenant; but it seemeth such alienation is a severance of the Joyntenant; but it seemeth such alienation is a severance of the Joyntena, and if the husband alien the Corody in Fee, which the wife the reason is hath, it shall not be any discontinuance, but the wife may debecause no mand her Corody.

Ind is in If the husband and wife exchange the Land of the wife for A other Lands, if the wife agree unto the exchange after the other Lands, if the wife agree unto the exchange after the wife E 3. She hall have a wife do accept of the parcel of the Land in dower, of which the hatha Cui in vita, by that acceptance she shall be barred of no part in her Cui in vita of the residue.

during the

others life. 36 E. 3. She shall have a Cui in vita, that is of a purchase during the Coverture, that he shall not have a cui in vita after the death of the others; but for &c. he may. 10 E. 4. 2.

2 E. 2. Cui m vita, 19. 8 E. 2. ibid. 25.

8 E. 2. Cui in vita 28. The husband gave the Land of the wife to 1. who gave other Land to the husband and wife, and to her fon of the husband, and to the heirs of him who lurvived; and that was pleaded by Exchange in Bar, in a Cui in vita; and holden no Bar. 20 E. 3. Cui in vita 10.

So if the accept a Rent where the and her Husband make a feoffment, 21 H.

6. 24.

19 H. 6.45. If husband and wife be Joynt-tenants before the Coverture, and the husband alieneth all the Land and dyeth, she

ture, and the husband alieneth all the Land and dyeth, the shall not have a Cni in vita but for a moiety. But if they be joynt-purchasors during the Coverture, and he alien all the land and dyeth, his wife shall have a Cui in vita of the whole land, because that during the Coverture as to purchase, they are but one person in Law. And the Writ of Sur Cui in vita lyeth for the heir of the wife, where the husband alieneth all the land in see, and the Writ is such:

Pr.ec. A. quod, &c. reddat B. unum mess. cum pertin. in N. quod clamatiesse jus & hareditatem suam, & in quod, &c. nisi per C.quond. virum D. matris præd. B. cujus hæres ipse est, quod C illud ei dimisit, cui ipsa D. in vita suacontradicere non potuit,

ut dicit, nifi, doc.

And in the Per and Cui thus :

Quod clamat, &c. Et in quod, &c. nifi per C. cui D.quond. vir. E. matris, amita, fororis vel confang.prad. P. cujus beres, &c. illud ei dimifit, cui ipfa D. in vita, &c.

And in the Post the writ shall be thus:

Nije post dimissionem quam I. quondam vir C. matris præd. B. 
amitæ præd. M. cujus hæres ipse est, eni ipsa C. in vita sua 
contradicere

contradicere non potuit, inde fecit, ut dicit, & unde queritur, &c. & nifi, &c.

And by that Writ appeareth, that the Aunt and the Neece may joyn in a Writ of Sur sui in vita, upon an alienation made by the husband, their common Ancestor; or upon a Recovery had against the Husband and wife, who was the common Ancestor to them, if the second husband alien the lands of the wife, and he and his wife die, the issue of the wife and the first husband shall have a Sur cui in vita against the Alience; although the second husband be living, if he were not entitled to be Tenant by the cur-

E tesie; but if the second husband be entitled to be Tenant by the curtefie, then the iffue of the first husband shall not have 8 E.z. (win a Sur cui in vita during the life of the second hutband.

And a Sur cui in vita was maintainable of a rent. M. 12 44 E.I. G E.3. And in a Cui in vita, the grant or gift alledged in the 5 E.3.37.

Writ is not traversable.

If a man giveth lands to a woman to marry her, and they 13.49 E. 3. marry, and afterwards the husband alieneth the lands and 29. 2 are. dieth, the wife shall have a Cui in vita of those lands given But 50.E. 3. her by her husband.

vita 26. (ui in vita

6.Act.5E. 2. Cuitm vis.25.

# Writ de sine affensu Capituli.

I THe Writ of Sine affensu Capituli lieth, where a Dean, Bishop, Prebendary, Abbot, Prior, or Master of an Hospital alien the lands which they have in the right of their House, Abby, or Priory, without the affent of their Covent, or their Chapter, or Brethren, &c. He who is the Successor shall have K that Writ, which is such: and may be in the Per, Cui, or

Rex Vic. &c. Præcipe A quod, &c. reddat B Episcopo de S unum meff. cum pertin.in N, quod clamat effe jus Ecclef. ipfius Episcopi S. Mariæ de S, & in quod idem A non habet ingressum nist per Houi R, quondam Episcop. de S prædeces. prædia. nunc Episcillud dimisit sine affensu & voluntate capituli sui, ut dicit, O.C.

And for a Master of an Hospital, the Writ shall be:

Rex Vic. &c. Pracipe A quod juste, &c. reddat B custod. Hospit. S. Mariæ Magd. Linc. unum mef. quod clamat effe jus hospitalis sui prad. & in quod idem A non habet ingress. nist per D quondam cuftod. hofbitalis prædict. qui illud ei dimifet fine affensu & voluntate fratrum & sororum ejusdem hospitalis, ut dicit, & nifi, &c.

And for a Prebend the form of the Writ is fuch:

Rex Vic. &c. Præcipe A quod, &c. redd. B Præbendario Præbendæ de D in Ecclef. B. Petri Ebor. unum mess. &c. in A, quod clamat esse prebend. suæ. Et in quod, &c. nist post dimissionem, quod R de B nuper Prebendarius prebend. prædict. fine licentia & voluntate Archiepiscopi Ebor. decani & capituli Eccles. prædict. inde secit W de R, ut dicit, & undequeritus, &c.

And for the Prior of St. John of Jerusalem in England, lieth

a Writ upon an Alienation of his predecess. thus:

Quod reddat B Priori Hospit. S. Joh. Jerusal. in Anglia, &c. quod clamat. esse jus Eccles. sur S. Joh. Jerusal. in Anglia, & in quod non habet, &c. nisi per W quondam Priorem S. Jo. &c. predecess. prad. nunc Prioris, qui illud dimisit sine assensu capituli, ut dicit, & nisi, &c.

And the Process in these Writsare Summons, Grand Cape,

and Petit Cape.

And hereby it appeareth, that a Prebendary shall have a L. Writ De sine assemble Capituli; by which it seemeth that he hath a Feesimple in the Prebend; and yet one Prebendary may enter upon the alienation of his Predecessor; as a Parson shall do upon the alienation of his Predecessor.

[195]

And also a Prebendary shall have a juris utrum upon an alienation of his Predecessor, by which it seemeth he hath not a greater estate than as Parson: But yet it seems reasonable that he have this Writ, De sine assential; because that he, the Bishop, and the Chapter are but one body, and are as one body, although the possessions be severed and divided amongst them; and every one of them is enabled to bring an action of his own possession in his own name.

And a man may have a Writ of Sine affensu Capituli against the same person by several Precipes, in the Writ of Lands in several Towns, and upon demises of his several

Predecessors, and it shall be good. Quod vi.H.33 E.3.

And if the Prebendary, or a Bishop, or Abbot be disserted, and afterward he releases to the dissers; it seemest he same is an alienation upon which he may have a Writ de since asserted after the release made, the successor hath not any remedy but by this Writ, or by a Writ of Right; But if the dissers doth not die seised, then it seemeth the successor may enter upon the dissers, notwithstanding the release of his Predecessor, for by the release no more passeth than he may rightfully release, &c.

12 4 f n fgr 1 250: cont:

and his wite

# Writ of Affise of Mort-dauncestor.

The Writ of Mortdauncestor lieth, where my Father or Mother, Brother or Sister, or Unkle or Aunt, or Nephew or Neece dieth seised of any Lands, Tenements or Rents, or of a Corody or other Rents; as Hens or Capons is fluing out of other Lands of an Estate in Feesimple: Now if a stranger after their deaths abate in that land, rent or prosit, I who am his heir shall have this Writ of Assis of

Mortdauncestor.

Tefte &c.

And if the Ancestor were seised, the day that he died of any lands or rents, or other like things of an estate in Feesimple, although that a stranger enterth and disseise thim of that land or renements the day that he dieth, so that he dieth not seised of the said land or rents, &. Yet I who am his heir shall have that Assis of Mortdauncestor; because the Writ doth not suppose that any Ancestor died seised, but the Writ saith, Parati sacramento recogn. sw pater, &c. suit seistius in dominico suo ut de seodo, die quo obiit, &c. and the same is sufficient, although he dieth not

E seised; and the form of the Writissuch:

Rex Vic. S, salutem. Si A fecer. Sc. tunc sum. Sc. Nishiberos & legales homines de visn. de N, quod sint coram Justiciar.
nostris ad primam assigna cum in partes illas venerint, vel coram
Justiciaris nostris apud Westmon. octabis, Sc. vel coram
dilectis, S fidelibus nostris D & E, & his quos sibi associaverimus ad cert. dien & locum, quos eidem D & E tibi scire
fac. parat. sacramento recognoscere, si W pater præd. A, vel
mater, soror, frater, avuncul. vel amita suit seisitus in dominico
suo ut deseod. de uno mesuagio & una virgata terræ cum pertin.
in N die quo obistr. Et si obist post coronation. dom. H kegis. 10 E.z. ForEt si dem A prostuquior heres esus sit, & interim præd. messuag. medo. 55.

Et et videant, & nomina eorum imbreviari sac. Sum. per Plow. Comibonos sum. B qui præd. mes. & terras nunc tenet, quod sit ibi man hath
ad audiend. illam recogn. & habeas ibi sum. & hoc bre. issue so

he taketh another wife, and hath iffue a Son, and lands are given to him, and his fecond wife in special tayl before the statute of Doms, if a stranger had abated, no Mortdams: effor lieth.

F And upon that Writ he needs not have any special Patent, for the general Patent made to the Justices, shall serve for that Writ. And if the Writbe, Quad sit coram dilectis & fidel: nostris D & E, & bis quos sibi associavimus, then Kk

30 AJT.24.

they use to have a special Patent directed to the same Justices, &c. But if the Justices be the Justices of Assise in the fame County, then their general Patent shall serve for that athle as well as if they had a special Patent. And the special Patent is fuch:

Rex dilect. & fidelibus suis D & E, salut. Sciatis qued constituimus vos Justic. nostros una cum bis quos vobis affociaver. ad aff. mortis antecefforis capiend, quam A arrain. coram vobis per breve nostrum de uno mes. & una virgata terr.in N. & ideo. &c. as in the Patent of Affife of Novel diffeifin.

And a man may have an affife of Mortdauncestor of se- G veral Rents, against several persons in several Counties, and Br. Attaint. in the end of the Writ shall be several summons against the

72. 50 Al. Tenants; and the form of the Writ is fuch: 4. Br. Aila.

Rex Vic. &c. Si A & B fecer. &c. tunc fum. xii.liberos, &c. parati sacramento recognoscere si W, pat.prad' A & avus prad. B fuit feisitus, &c. de decem folid. redditus cum pertinen.in N. er si obiit, &c. Et iidem A & B sint, propinquier, &c. & interim tenementum illud, unde redditus ille provenit, videant, & nomina corum, De. & fum. per bon. fum. S, qui fex folid.redditus eis inde deforc. & T, qui quat. folid. redditus eis inde deforc. quod tune fint, &c.

And by this Writ it appeareth, That the Aunt and the Neece shall joyn in assiste of Mortdauncestor, and that is by

the Statute of Gloucest.cap. 6.

And if the Heir who bringeth affife be within age, he H shall not find Pledges; and therefore the form of the Writ Shall be of another form, and shall not say, Si A fec. te, oc. but thus:

Rex Vic. &c. Sum. &c. xii.liber. & legal. homines, &c. fi W pat. pred. A, qui infra ætatem eft, ut dic. fuit feifit. &c. And shall not fay in the Writ, Et si obiit post coronat. Oc. because it appeareth by the age of the Demandant; but if many fifters be demandants, and some of them be within age, and fome of full age, then the Writ shall be in the common form, as if all were of full age.

If a man go beyond the Sea in Pilgrimage, and dieth [196], there, nis nen thus: there, his Heir shall have a Writ of Mortdauncestor of ano-

Rex Vic', &c. Si A fecer. &c. fum. xii. &c. fi W pat. prad. A fuit feifit. in dominico suo, &c. de reddit. unius clavi gariofili, cum pertin. in N die in quo it. peregrinat. arripuit versus terr. sanct. vel versus Hierosolym. vel versus S. Jacob. in quo itinere obiit, ut dic. & siter illud arripuit post coronationem, oc.

And

And in that Writit sufficeth if he were seised the day he went out of the Land, and took the Sea, although it was A not the day of his death. And if the Father enter into Religion, and be prosessed, the Sonshall have a Mortdauncestor, if the Stranger abate in the Land; the Writ shall be, Si W pater, Sec. die quo habitum Re'igionis assumpset, in quo habitu prosessed suit, at dicitur, Et si habitum illud assumpset post coronationem, &c.

B If a man have a Corody to him and his Heirs, if he die feifed, or was feifed thereof the day of his death, his Heir fhall have an Africe of Mortdauncestor thereof; if it be ta-

ken from him; and the Writ shall be:

Rex Vic. Sc. Si W fecer. & c. tunc sum & c. xij. liberos, & c. de visn. villæ Westm. quod sint, & c. parati, & c. Si L mat. præd. W suit seista in domin. suo ut de seodo de xi s. reddit. & redditu lxij panum, trium lagenarum vini, xx lagenar. cervisiæ, & xxx serculorum cum pertin. in villa Westm. die quo obiti. Et si obiti, & c. Et si iden W. & c. & interimten. unde redditus ille provenit videant, & sum. & c. T. Abbat. Westmon. & fratrem R de B, & fratrem K de S. commonachos ejustem Abbatis, qui reddit. præd. ei deforc. quod tunc, & c.

And the order to fet the parcels in the Writ', shall be as

in a Writ of Right.

And a man shall have a Certificate upon this Writ, and also Writs of Affociation, and Si non omnes, as he shall have

in Affise of Novel disseifin.

And by the Statute of Gloucest. if Tenant by the curtesse alien his Wives Inheritance, and dieth, the Heir of the Wise shall have an Assis of Mortdauncestor, if he have not Asses by descent by the Tenant by the Curtesse, and the same shall be as well where the wise was not seised of the Land the day of her death, as where she was seised thereof, for that Writis given by the Statute.

If the Lord have the Ward of the heir of his Tenant, and when he cometh of full age, the Guardian will not suffer him to enter into the Land, the Heir shall have an Assise of Mortdauncestor against the Guardian, by the Statute of

Marlebridge, cap. 16.

And the Process in Mortdauncestor is Summons against 8 Ass. 13.85 the party, and if he make default at the day of the Assis default & return, then the Plaintiff ought to sue a Resummons, and appearance if he make default again, the Assis shall be taken by his 88, default.

And if a man vouch in an affife of Mortdauncestor, and at the first day the vouchee make default, then a Resum-

Kk 2

mon

mons shall issue forth against him; And so if the Tenantor vouchee at the first day be Essoined; and afterwards at the day given by the Essoin, the Tenant or vouchee make default, a Resummons shall be avoided. But if the Tenant at first day be Essoined, as in the Kings service, and afterwards make default at another day, the Assis shall be taken by his default, &c.

And if the Writ of Mortdauncestor be brought by several Summons against several Tenants, then the Assise may be taken one against one Tenant, and another against the

other Tenant, quod vi. 3 E.3. It in. North.

And a Mortdaunceftor doth not lie for Lands devisable by will, because title may fall to another who is not heir, by the will of the Ancestor, &c. and yet the Writ is true, that he was seised the day he died, quod vi. 23 E. 3. lib.

All.

And if a man be feifed in Tail, the remainder to his right Heirs, and afterwards he died feifed without iffue of his body, and a stranger abateth, it is a question if the heir shall have an affise of Mortdauncestor. And A.21 E.3. Itin. Suff. M.5 H.4. the opinion of some is, That if the remainder be to his right heirs, that then he shall not have an affife of Mortdauncestor; But if a gift in tail be made unto one, the remainder to him and his right heirs, that then he shall have an affife of Mortdauncestor, because he hath the remainder in Fee to him and his heirs: But it seemeth he shall not have an affise of Mortdauncestor in the one case, nor in the other; for the words of the Writ are, SiW pater &c. fuit seisitus die quo obiit in dominico suo ut de feodo, and that he was not, for he was seised in demesn ut de feodo lathato, and not in demesh as of see, and therefore the Jury cannot find that he was feifed in his demela as of fee, for of the demesn he was seised in tail. Quert of that.

If the Ancestor dieth seised and hath two sisters his L heirs, one of them shall not have an affise of Mortdauncestor against the other, for this Writ lieth against strangers, and

not against parties in blood.

And fo in Gavelkind, one brother shall not have a Mort-dauncestor against the other for the privity of blood, but he ought for to sue a Nuper obite against his brother, or one

fifter against the other,&c.

And H. 13 H. 3. Itin. Suff. the youngest brother had a Mortdauncestor against a stranger, and shall recover where the eldest went beyond sea, although he were not dead, because 18 years passed since the eldest went beyond the Seas.

And

And A.12 E.2. It was adjudged accordingly, where the younger brother recovered in Affise of Mortdauncestor, where the eldest went beyond the Sea, and was alive.

# Writ of Nuper Obiit.

A THe Writ of Nuper Obiit lieth where the Grandfather, father, brother, unkle, or other Ancestors of the de- 197] mandant dieth seised of Lands, Tenem. or Rents of an Eftate in Fee-fimple, and after their death, one of the heirs of the same Ancestor doth enter and deforceth the demandants; now he or those who are so diffeised shall have that Writ against their Coparcenor; and that Writ lieth for one Coheir against the others, or for divers Coheirs against many as the case is, and it ought to be where the common 7 E.3.15 Ancestor dieth seised of Land, &c. of an estate in fee-simple; for if one fifter do deforce another fifter of Land, whereof their Ancestor died seised of an Estate in tail, her sister shall have a Formedon against the fifter who deforced her, &c. and not a Nuper obiit. And the form of the Writ is fuch:

Rex Vic. &c. Si A & B fecerint, &c. tune fum. &c. C, quod sit coram Justic. nostris apud Westm. tali die, &c. oftens. quare deforc. præf.A & Brationabilem partem suam , que eas contingit de bæreditate, que fuit W de N patris, matris vel alterius anteceff. pradict. A, B & C cujus haredes ipfa funt, & que nuper obiit ut dicit, &c. Et habeas ibi fum. & hoc breve, &c. Tefte, &c.

And the Writ may be brought by the Aunt against her fifter and her Neece, and then the Writ shall be such:

Rex Vic. &c. Si A& B uxor ejus fecerint, &c. tunc fum. Crc. C & D, quod fint, Oc. oftenf. quare deforc. præfat. A & B, rationabilem partem ipsius B, que ei contingit de hæreditate que fuit E in N, matris predict. B & C, & proave predict. D cujus hared. ipfa funt, & qua nuper obiit, ut dic. & habeas dec.

And that Writ lieth betwixt coheirs in Gavelkind, as 2r. entry well as between women who are Coparcenors; and if one Congeable coparcenor be deforced by another coparcenor and a ftran-122.collects, ger, the shall have a Numer Obiit against her coparcenor, and stranger by the Rule in the Register, that non-tenure shall not abate gains nothe Writ.

And also by the Rule in the Register, in a Nuper Obiit, freehold by Nontenure of parcel of the thing demanded, shall not abate that entry, the Writ.

thing of the

# Writ of Nuper Obiit.

And if two of the coparceners enter after the death of p their ancestor and desorce the third sister, and afterwards they make partition betwixt them, and then one of the two alieneth her part unto a stranger in Fee, yet the third shall have a Nuper Obiit against her two sisters notwithstanding that alienation, and shall recover the third part thereof, whereof the coparcenor who aliened not wasfeiled,

And for to recover the third part of the other Coparce- F nor, which is in the hand of the Stranger, the ought to fue an affife of Mortdauncester in her name, and in the name of her other Coparcenors, &c. Or a Writ of Aiel, as the case

16 H.7. demandant Affife of his damages plea. in the Nuper blood. obist.

And if one Coparcenor do enfeoff a Stranger in Fee, and G r. per Keble, taketh back an Estate to him in Fee, or for Life, yet it by the differens a Nuper Obiit lyes againft him by the other Coparection nor, if he do not disclaim in the blood, M. 2.E.2. and it seems is put to his reasonable. But M. 21. E. 3. and M.45.E.3. 7 H.6.8. It is holden the contrary: But feveral Tenancy, or non-Tenure, is Mortdance- no good plea in a Nuper obiit, for the privity of blood; but ftor also he if he claim by purchase, or disclaim in the blood, it is a good is barred of ples

And a Nuper Obiit lyeth betwixt fifters of the half H

And if a Nuper Obiit be brought of the feifin of the Grandfather; darrein Seifin in the Father is no plea, without alledging a dying seised in the Father, &c.

A Nuper Obiit lyeth of the seisin of the great Grand- K

father.

And the Nuper Obiit ought to be brought by that Coparcenor who is deforced, &c. against all the other coparcenors, although that some of them have nothing in the Tenancy,

And it appeareth, T.4.E.2. That the Nuper Obiit lyeth of the L feisin of his Father, if the Father were seised the day that he dyed; or the day before, for that amounteth to a dying feifed, &cc.

And if one fifter hath iffue a Son, and dyeth, and the Son M doth enfeoff a Woman in Fee of all the Land and afterwards marries her: The Nuver Obiit doth not lye by the other Coparcenor against the Husband and Wise; but there he may bring a Mortdauncester in his own name, & in the name of the husband against the Husband and Wife. An. 18. E. 2. Itiner.

A Villain and his Wife shall not have a Nuper Obiit against N

his wifes Coparcenor, because he is not enfranchised by the marriage of one of the Coparcenors which was one of his

Lords, to whom he was Villain before.

O And if the Father give Lands in Frankmarriage to his fifter, and dyeth feifed in fee of other Lands, fhe shall not have a Nuper Obiit against her fifter for the Lands in Fee-simple, unless he will put the Lands which were given in marriage in Hotch-pot, &c.

P . A Nuper Obiit lyeth of a Corody.

Q And Voucher, and the view do not lie in the Nuper Obiit.

R And the Aunt and the Neece shall joyn in a Nuper Obiit against the other Sister, or Neece. &c.

# Writ of Quare ejecit infra terminum.

THE Writ Quare ejecit infra terminum, lyeth where a man leafeth Lands unto another for years, and after he entreth and maketh a Feoffment in Fee of the same Lands to a stranger, or for life; the lesse shall have that Writ Quare ejecit infra 11 H. 6. 6. terminum, against the Feoffee, or Lessee for life.

And in that Writ he shall recover his Term again, and his dant the damages also if the term be not ended, and if the Term e Writ, yet

ended he shall recover all his damages.

And the process in that Writ is Summons, Attachment and shall not Distress infinit, and not process of Outlawry, because the Writ abate. is not vi & armis. And the form of the Writ appeareth after. &c.

But this Writ of Quare ejecit infra terminum, was devised, as it is faid by a wife man called william Merton, and for this cause. For if a man lease Lands for years and after he ouste his Lessee, and after he hath put him out, he make a Feoffment of the Land unto a stranger in Fee. Now the lessee cannot have a Writ of Ejellione firme against him who is the Feoffee, because he did not put him out, for which in that case the Leffee had no other remedy but to enter again into the Land. And if the Feoffee do then put him out, the Leffee may have against him an Ejectione firme vi & armis for the wrong done him, and before entry made by the Lessee, he had not remedy against the Feoffee. And therefore by the equity of the Statute of west. c. 24. (as often as hereafter it shall happen in the Chancery that in one case a Writ is found and in the like case falling under the same Law, and wanting the same remedy, &c. Let the Clerks of Chancery agree, &c. ) And by reason of that Statute was this writ devised. Kk 4

But verif the Leffor put out the Leffee; and prefently make a Feoffment in Fee, fo as the feoffee be party or privy to the oufter of the Leffee, then the Leffee shall have a Writ of Ejectione firma vi & armis against the Feoffee, because he is party to the ouster, and to the wrong done unto him. And the Writ followeth:

Rex Vic. &c. Si A fecerit, &c. tunc fum. &c. B, quod fit, &c. oftenfur. quare deforc. præf. A unum meluagium cum pertin. in N, quod Cei dimisit ad terminum, qui nondum præteriit, infra quem terminum idem C præfat. B mefuag: illud vendidit, occasione cuius venditionis idem B praf. A de mesuagio prad. ejecit, ut dicitur, & babeas, &c.

And the like Writ lieth where the Son and Heir of the C Leffor maketh a Feoffment, &c. and the Feoffee oufted the

Leffee.

And if the Lessee granteth over his term, and afterwards D the Leslor maketh a Feoffment of the landunto a stranger in fee. Now the second Lessee shall have that writ,&c. and the Writ shall be;

Quare deforc. praf. B unam mesuag. &c. quod R cui L illud dimifit ad terminum qui nondum præteriit , eidem B dimifit ad eundem terminum, infra quem terminum idem L mesuagium,

And foif 4 let a house to A for years, who granteth over his estate to B, and afterwards two of the Lesiors die; and the Survivor maketh a feoffment unto c in fee, B shall have a Quare ejecit infra terminum against the said feoffee, and the

Writ shall recite the special matter.

And if a man doleafe land for years, and the Leffor doth E fuffer a Recovery to be against him upon a seigned title. who entreth, yet it feemeth the Lessee shall have this Writ of Quare ejecit infra terminum, &c. And the words of the Writ are, Occasione cujus venditionis; and yet the same is not properly a fale, but those words are but of form. / But before the Statute of 21H.8.c.15.it feemeth that the Tenant for years could not have falfified the Recovery had against his Leffor.

35 H 8.53. 63.L. H.8. fol.74 5 H.7.7. 7.37.11 H. 6,7. Babing-

And if a man leafe lands for a term of years, and after- F &c.36 H. 8 wards dieth without heir, and the Lord by Escheat enter and puts out the Termor, it is a doubt whether he shall have a Quare ejecit infra terminum against the Lord by Escheat; but it seemeth reasonable that he should have it.

And so if the Villain leaseth lands for years, and after G the Lord of the Villain enter, and puts out the termor, the leffee shall have that writ. And so if a man lease lands for

18 An Exposition ony Stat font grat + 46

years, and afterwards a stranger put out the lessee, and disfeijeth the leffor, and afterwards the leffor releaseth unto him, it feemeth the leffee shall have the Writ , Quare ejecit infra terminum against the disseifor,&c.

And Quare ejecit infra terminum lieth as well against the

lesfor, as against his feoffee, quod vide H.19 H.6.

And it seemeth that the sale supposed in the Writ, is not traverseable but only the ejectment, &c. And if so, then it feemeth the Writ lieth against the Lord by Escheat, or against the Lord of the Villain who putteth out the termor,

But an Ejectione firme lieth against the Lord of the Villain, if he put the term out of his leafe made by his Villain, before entry made by the Lord into the land. And so an Ejectione firme lieth against the Lord by Escheat, if he ouft the Termor of the leafe made by the Tenant,&c.

And for the Book of 19 H.6.it appeareth that it is in the election of the leffee, to fue a Writ of Ejectione firma, or a Writ of Quare ejecit infra terminum against the lesior or his heir, or against the Lord by Escheat, or against the Lord of the Villain, if they put the Termor out of his term, &c.

# Writ of Ex gravi Querela.

THe Writ of Ex gravi Querela lieth, where a man is feised of any Lands or Tenements in any City or Borough, or in Gavelkind; which lands are deviseable by will, time out of mind,&c. Now if one who had lands or tenements out of mind,&c. Now it one who had lands of tenements there, doth devife those lands of tenements unto another Note, that in seefimple, or in seefail, he to whom the devise is made hath paid shall have this Writ of Ex gravi querela, for to execute that 15. it is no devise.

ancient Town that

may devife, Ter. 40. Aff. 41. 39 Aff. Br. Aff. 355. This Writ is not incident to lands deviseable. Quare, If a Devise of a Rent out of land deviseable, be within the benefit of this Writ. 26 H.8, &c. or 5. & 4 & 5. Ma. Dyer 140.

And if a man do devise such lands or tenements unto one in tail, the remainder over in fee unto a stranger, if the tenant in tailenter and be seised by force of the entail, and afterwards dieth without iffue, he in the remainder shall have such Writ of Ex gravi querela to execute that de-

And so if a man devise Lands or Tenements unto one in tail, and afterwards the Tenant in tail dieth without iffue of his body; the heir of the donor, or he who hath the reversion of the Land shall have the Writ de Ex gravi Querela in the nature of a formedon in the Revertor, to recontinue the poliession of the Land to him who hath the Reversion. And first for land devised in tail within the City R of London; the form of the Writ for the heirs of the De-

visee in tail, is such ;

Rex Majori & vic' Lond. salutem: Ex gravi querela I filie E, & M fororis ejustem I accepimus, quod cum secundum consuetud. in eadem civitate bactenus obtentam & approbatam liceat unicuique. Civi ejusdem civitatis tenem. sua in eadem civitate in testamento suo in ultima voluntate sua tanquam catalla sua legar. cuicunque voluirit, ac S quondam Civis civitat. pradict. in testamento suo in ultima voluntate sua quatuor sho-Br. Castrum p.15 cum pertin.in ea dem civitate existent. vel quatuor mesuagia, & decem (hopas cum pertin.&c. E habend. fibi et hæred. de corpore suo exeuntibus legasset R & Suxori ejus, duo mesuag. & iij. shopas inde F, et iij. shopas inde præf. I & M filiabus et bered. ejusdem in E deforc.minus juste in ipfar. I & M diffend.

Locus imterfellus,

40 Aff.41.

38.

Writ.

non modicum et gravamen, et contra voluntatem testatoris predict. ac contr. conf. prædict. Et quia eifdem I & Minjuriar. See the next noluimus in hac parte: Vobis mandamus, quod vocat. coram vobis partibus præd. auditisque hinc inde earum rationibus, inspectoque tenore testamenti præd.eisdem I & M.plenamet celerem. juftic. inde fieri faciat. prout de jure et secundum consuet. præd. fuerit faciend. hactenus in casu consimili ibid fieri consuevit vel eisdem I & M,in hac parte fieri faciat. debitum et festinum justic.

complementum, prout,&c. Tefte, dec.

And it appeareth by that Writ, That the King comman- C. deth them to do according to the custom of the City, or to do justice to the parties, by which it seemeth, that the Mayor upon that Writ shall award process to summon the party who is Tenant of the land, to appear at a certain day, to answer to the Plaintiff in the nature of a Summons in a Pracipe quod reddat: and when he cometh the Plaintiff ought to shew the Testament, and to count upon the same, and to alledge seifin of the Land in the Testator, and how that he devised the same to him. And that the Defendant D then plead thereunto, or the Mayor and Sheriffs ought to proceed therein according to the ulage of the City. And E that Writ may be fued against several Tenants; and then the Mayor ought to make feveral precepts unto every Tenant. And if the land be in another Burrough, then the Writ shall be such:

Rex

Rex Ballivis suis de magn. Yarmouth, salut. Ex gravi querela,&c. (ut supra) quod secundum cons. in Villa dict.hactenus, &c. liceat unicuique Burgens. ejusdem Vill. tenementa sua, quasibi acquisserit in eadem Villa, in testamento suo inultima voluntate sua, &c. (ut supra.) Ac N Burgens. ejusdem Vill. unum mesuagium cam pertin. quod sibi acquisserit in eadem Villa, in testamento suo in ultima voluntate sua W et heredibus suis legasset, R de E mes. predict. post mortem præd. N ingress. illud præsato W desorc. minus juste, in ipsius W,&c. (ut supra) et quia nolumus,&c. (ut supra.)

And if a man deviseth his lands to his Wife for life, the remainder over to another in fee, and the Tenant for life entreth, and is seised by force of the devise and dieth, and he in the remainder is deforced, he shall have such Writ:

Ex gravi querela, &c. (usque ivi) voluerit, ac M quondam Civis ejusdem civitatis D uxori suæ in testamento suo in ultima voluntate sua, quatuor shopas cum pertin. in I quas sibi acquiferit in eadem civitate, ad vitam ipsius D habend legasset, ita quod post decesse ejusdem D præst. shopa cum pertinent. præst. et bæred. suis remanerent, N quæ shopas illas tenet ex dimissione præd. D eas præst. et post mortem ejusdem D deforc. minus juste, in ipsius E dispendium, &c.

And if a man do devise lands by his Testament in Tail, the remainder over in Tail unto another, and the first Tenant in Tail entreth, and dieth without issue; and the second Tenant in Tail entreth in his remainder and dieth without issue, the heir of the Donor shall have the Writ of Exgravitive, the heir of the Donor shall have the Writ of Exgravitive.

Querela in this form :

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Exgravi querela,&c. (ut supra,) ac I.P quondam Civis civitat. præd. pat. præd. S cujus hæres ipsa est, unum mesuag. cum pertin. in suburbiis Lond. M fil. ipsius I, et hæred. de corpore ipsius, M legitime procyeandis habend. legasset, Ita quod si idem M sine hæred. de corpore suo legitime procreat. obiret, prædict. mesuag. &c. R fil. præd. I, &b. bæred. de corpor. præd. R legitim, procreat. remaneret, L capellan. cantar.ad Altar. S Joh. in novo opere in Ecclesia S. Pauli Lond. pro anima Magistri W quond. canon. ejusd Ecclesiæ ordin. prædict mesuag. cum pertin. post mortem præd. M & R præs. S ad quem diem mesuag. cum pertin. post mortem præd. M & R præs. S ad quem diem mesuag. cum pertin. fo legit. procreat. ut dic. desorc.minus juste in ipsius S dispendium, &c.

H And it appeareth by the subsequent Writ, That when a man doth make a devise of his lands in London, and also of his goods, and makes Executors, &c. then the first Executors shall prove the same before the Ordinary; and then after

they

they shall bring the same before the Mayor into London, &c. and it shall be there enrolled, and then upon that enrolment the Mayor upon a Writ of Ex gravi querela sued for the lands shall do execution, and such process as upon a fine of

lands,&c. and the Writ is such:

Rex Majori, &c. Vic. Lond. salutem. Cum, ut accepimus, secund. consuetudinem in eadem civitate hactenus obtentam & approbatam, testamenta in quibus laica tenementa in pradie? civitate legata fuer. fa&. prius probatione eorund. testamentor. coram Ordinar. pro bonis & catallis in eisdem legatis, coram vobis in Hustingo nostro Lond. approbari & irrotulari debeant ad exec. tenementor. sic legator. faciend. Ac jam ex relatu R, consang. I de P nuper civis Lond. accepimus, quod licet præf. 1 unam shopam & duo solar. cum pertin. in Parochia S. Mich. Lond. in eadem civitate, intestamento suo in ultim. voluntate Jua præfat.R legasset, habend. & tenend. sibi & hæred. suis inperpetuum,idema; testam. prout moriseft, coram Ordin-probatum, existit, tamen E, que fuit uxor I de P & A exec. testamenti ejusdem I testamentum illud penes se, detinent, non permittentes illud in Hustingo præd.irrotulari, ut præd.est, in exbær. ipsius R periculum manifestum, ac contra consuet. præd. Nos nolentes eid. R injuriari in hac parte, vobis mandamus, quod vocatis coram vobis præf. execut. & auditis tam præd.R.quam præd.execut.in hac parte rationibus, ulterius in pramiff. faciatis, quod de jure, Oc. & secund. consuet. civitatis prad. juerit faciend. & ba-Etenus in casu consimili ibidem fieri consuevit.

And by that Writ it appeareth, That if a man have lands devised unto him in London by Will, that he shall have a writ unto the Mayor, to compel the Executors to bring in the same to be proved before them in London, and enrolled in

the Huftings.

And if a man have lands devised unto him in Oxford, the custome is, That the Testament shall be proved there before the Ordinary, and afterwards it shall be proved before the Mayor of Oxford, &c. And if the Mayor will not prove the Will, then he to whom the devise is made, and also the Executors, who took any advantage of Administration by that Will, shall have a Writ out of the Chancery directed unto the Mayor and Bayliss, commanding them to prove the Will, and thereupon they shall have an Alias and a Pluries, vel causam nobis significes, &c. and afterwards an Attachment against them if need be, returnable in the Kings Bench, or Common Pleas.

And by the same reason he shall have the like Writ against the Mayor of London to prove such Will, and to enroll the

fame,

same, and upon that Cui, Alias and a Pluvies against the Mayor of London, and Attachment if need be.

And by the same reason it seemeth reasonable, that a man shall have a Writ directed to the Ordinary to prove the Will of any man; &c. and the form of the Writissuch:

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Rex Majori & Ballivis Vill. Oxon. salut. Querelam T & M uxoris ejus accepimus continent. quod cum secundo consuet. in vill. prædicta ufitatam & hactenus approbatam, teftamenta burgenfium villæ prædict. ibidem decedentium, super tenement. & poffessionibus, fi fint ibidem legata, primo coram ordinar. & fecundar. coram vobis in cur. villa pradict. probar. debeant & consuever, temporibus retroactis, ac executores testamenti N, cum pref. T & M, postquam testamentum prædict. N coram Ordinariis villa pradict. prout moriseft, probatum fuit, frequent. illud coram vobis iterato proband. detuler. juxta consuet.prædict. occasione quorund. tenementor. in suburbio, ejusdem vill. quæ prad. N in ultima voluntate sua eidem M legaverit, sicut in testamento prædict. plenius continet. Vos tamen probationem illam hactenus recipere recufastis, & adhuc recusatis minus juste, per quod nec prædict. executores, nec præf. T & M super tenem. predict. aut aliis tenementis per quod N legatis administrationem consequi possint, in retardationem executionis testament. prediff. or contra voluntatem pred. N, nec non damnum ipforum To M, & execut. præd. non modicum damnum & gravamen: Nos igitur executoribus & T & Minjuriari nolentes in hac parte, vobis præcipimus, sicut alias præceperimus, quod si ita eft, tunc præfat. execut. & T & M plenam & celer. justitiam in bac parte fieri fac. prout de jure & fecundum consuetud. præd' in cafu consimili fuerit faciend. ita quod querela ad nos inde non perveniat iterata, vel causam nobis significetis, quare mandatis, Oc. Tefte, Oc.

And it is reasonable that it be so done in every other City where lands be deviseable by Will, and are devised by will, That the Executors and the Devisees shall have such actions against the Ordinary, and also against the Eayliss of the Town and Eurroughs to prove such Wills.

And in place of a Formedon in the Descender in Tene-

ments devised, is such Writ:

Ac A quondam civis, &c. M filiæ suæ quoddam mesuag. &c. habend. sibi & hæred. de corpore suo exeunt. legasset, T. Mesuagium predict. ingress. illud post mortem præd. M & W filii & hæred. ejusdem M, præs. L fratri & hæred. predict. W desorciavit minus juste, in ipsius, &c.

And it feemeth, that when the tail is once excepted before of the devise in the Tenant in tail, or in the Tenant for

term

Writ of Entre ad terminum qui prateriit.

term of life, that then he in the Remainder, or heir of Tenant in tail, have a Formedon in the Descender by the course of the Common Law after the Statute of West.2. according to the common form upon a gift made in tail by Deed.

And there is another form of Writ in the Register in C

nature of a Formedon in the Descender.

And if a man in London devise land unto a woman for A term of her life, and afterwards to her Executors to fell, and to convert the mony to her own use, by the custome of London that Testament ought to be proved before the Ordinary, and afterwards before the Mayor, &c. and to be enrolled, &c. If the Testament be proved before the Ordina- B ry, and afterwards one Executor doth detain the same, and will not prove it before the Mayor, &c. the other Executor shall have a special Writ directed unto the Mayor and Sheriffs of London, commanding them to call the Executors before them, and to see the Testament, &c. and to do right according to the custome of the City, and according to the

And if a man doth devise lands to his wife for the term C

Law, &c. which Writ appeareth in the Register.

2 & 3 Ma. Dyer 127.

164.

Entry.

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201.

Vide Perkins That he in the Rem. fhall not take benefit of the Condition by way of

of her life upon condition that if she marry, that the lands shall remain unto his Son in tail: and for default of such issue, the remainder to the right heirs of the Donor in see. Now if the wife taketh a hufband who occupieth the lands, and he in the remainder dieth without heir of his body; the right heir of the Donor shall have a special Writ of Ex gravi querela directed unto the Mayor and Sheriffs of London, reciting that special Devise, and the matter as it is, commanding them to call the parties, and to hear them, and to do right, &c. And by that it appeareth, that he in the remainder shall have advantage of the condition if it be broken; but the same shall be by way of action, and not by entry: for the condition not performed, which Writ appeareth in the Register.

# Writ of Entre ad terminum qui prateriit.

nthe may mambam Writ of Entre ad terminum qui prateriit lieth where a D A man leaseth Landsor Tenements for term of life, or by reason of y years, and afterwards the term expireth, and he to whom the lease was made, or a stranger entreth upon the lands, and occupieth the same, and deforceth the Lessor, the Lessor his heirs shall have the Writ.

And that Writ lieth in the Per, Cui and Post. For if the E Lessee hold over his term, and afterwards maketh a Feoffply who hold overy-

That this wit lies agt y rather p Domission of g Temendant in for any. trehold yt y m him for he has but anan porsynon:

trist fright for!

Stak cant Dryffrytt

Writ of Entre ad terminum qui præteriit.

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ment, the Lessor or his heirs may have that Writagainst the 21 E.3. Brief Feossee in the Per; and if the Feossor maketh a Feossement 308. One over, he may have it against the second Feossee in the Per Writ upon a and Cui, and against the third Feossee in the Poss. And the second Feossee in the Writissuch:

Rex Vic. &c. Prac. A, quod reddat B unum gurgitem, &c. in quemid. A non habet ingressum, nisi per C cui præd. B illud dimisit ad terminum qui præteriit, &c. Et nisi secerit, &c. Et

præd' B fecerit te fecurum, &c.

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And in the Post the Writ is: Et in quod idem A non habet ingressum, nist post dimissionem, quam idem B, inde secit D ad terminum qui preteriit, or quod post terminum illud ad pras. B, reverti debet ut dic. or unde querit. quod præd. A ei deforc. or nist, or.

And by those words unde queritur, in any Writ of Entry in the Per and Cui, but only in a Writ of entry in the Post.

But if a man will bring a Writ of Entry, Ad terminum qui pretriit of his father, mother, or other ancestor, then there behoveth to be in the Writ these words, quod clamat esse by bereditatem summand the form of the Writ is such:

Rex Vic. &c. Pr.ec.A, quod,&c. redd.B unum mesuag. cum pertin. in N, quod clamat esse jus & h.ered. suam, & in quod idem A non habet ingressum nise per D patrem, vel matrem, vel alium antecess. pr.ed. B cujus hares ipse ess, q. illud ei dimist

ad termin. qui præteriit ut dicit, o nisi fecerit, oc.

And in the Per and Cui thus: quod clamat, &c.& in quod, &c. nist p.C cui D pat. vel alius antecessor præd. B cujus hæres ipse est, illud dimist ad termin.; qui præteriit, &c. And in the Post thus, Nist post dimission. quam R ac. prædict. B, &c. cujus hæred. ipse sunt, &c. or thus, Quam C pater præd. B & avus prædict. S, cujus hæred. ipsi sunt inde secit H ad termin. illum qui præteriit, & quad post termin. illum ab præsiat. &c. reverti debet, ut dic. & und. quer. quod prædict. A eis desorc. &c.

nisi,&c.

And in every Writ of Entry which a man demandeth of the possession of his ancestor, he ought to have these words in the Writ, Quod clamat essession be hered.&c. but of his own possession he shall not have those words in the Writ, but only in a Cui in vita, brought by a woman of her inheritance aliened by her husband, for there she shall have in her Writ these words, quod clamat essession bereditatem suam, &c. but the same is where the woman claimeth an estate in Feesimple by the Writ, for if she claim but an estate in tail, or afreehold by her Cui in vita, then the Writ of Cui in vita shall make a special mention of that estate, &c.

7.5

# Writ of Entre ad terminum qui prateriit.

If a man lease a Mannor for life or years, unto which an G advowson is appendant, and afterwards the Lessee doth make a Feoffment of the Mannor in fee, and taketh back an estate of the Mannor, except the advowson, to him for life, If the leffor bring a Writ of Entry, ad terminum qui prateriit, of the Mannor against the lessee, and doth not make exception of the advowson; the Writ shall abate for nontenure of the advowson upon the matter shewed, as appeareth by the Register.

The Aunt and the Neece shall joyn in this Writ of ad H terminum qui præteriit, as appeareth by a Writ before men-

tioned.

Wi. Theolmall. \$31,132. 228. 8 E.3. Entre 4. V1. 14 H.S. Io. Brook.

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And if a man maketh a Feoffment in Fee upon Condition, that if he pay a certain fum of mony at a certain day to the Feoffee or his heirs, that then he shall have his land again, and that he may enter, if he pay the mony at the day, and afterwards the Feoffee will not fuffer him for to enter: The Feoffor shall have the Writ of ad terminum qui prateriit, because that when he payeth the mony, the other hath no term in effect; and if he should not have this writ, he could not have any remedy but to enter, &c. and thereupon to have an Affife.

And M. 5 E.3. it was adjudged that the plaintiff fhould recover in such action upon such matter pleaded and shewed; But I do not perceive how the fame could be maintained by reason, because the feesimple is not properly faid a term, for then the Lord by Escheat should have a Writ of ad terminum qui præteriit, if his Tenant dieth without heir, where he cannot have a Writ of Escheat; and in terminum qui prateriit, the lease alledged in the Court is traverseable.

If the husband and wife lease the wives lands for years, A Vid.50 E.3. and the husband dieth, and the Termor holdeth over his term, the wife shall have a Writ of ad terminum qui præteriit if the will,&c. but the ought for to count that the and her husband leased the Land,&c.

And it appeareth in 8 E.2. Itin. Canc. that the Grantee in B reversion shall have a Writ of ad terminum qui præteriit against the lessee, or his heir, or assignee, and yet there is no fuch writ in the Register.

# Writ of Dum fuit non Compos Mentils

C THe Writ of Dum fuit non Compos Mentis, lieth where a Coul Finty man, who is not of sane memoire, alieneth his lands or + 247 photo Tenements in Fee-simple, or in Fee-tail, for life or for years, if he be afterwards divorced by his Alience or Leslee, then Je forces he himself shall have this Writ against his alienee, or lesse, notwithstanding his own alienation, or his own lease; and the same appeareth by Writs in the Register, which are of such form:

Rex Vic. &c. Prac., A quod reddat B unum mef. & XX acr. terræ cum pertin. quæ id.B ei dimisit, dum non fuit compos mentis sua, ut dicit, & nist fecerit, &c. Vel fic: In quod idem A non habet ingressum nisi per C cui præd. Billi dimisit, dum non fuit compos mentis, &c. Vel fic in the Post, In quod idem A non habet ingress, nisi post dimission, que præd. B dum non fuit

compos mentis Juæ inde fecit D, & unde queritur, &c.

D XAnd some have said, that Writ lieth not by him who is a Whichan alieneth the land, because he shall not disable himself nor sect 495; Chap contradict his own deed; but that seemeth to be little Coments \$249 reason, for this is an infirmity which cometh by the act of God, and it standeth with reason, that a man should shew how he was visited by the act of God with infirmity, by which he loft his memory and discretion for a time; as if an Infant within the age of twenty one years doth make a Feoffment in Fee, or a lease for years, he himself shall avoid his Feoffment or leafe, as well within age, as of full age, although he shall not have a Dum fuit infra atatem within age, because the writ doth suppose him to be of full age, but an Infant of the age of 14 years hath discretion adjudged within at fuch age and if he at fuch age commit felony, he shall be hanged for the same, and yet his Feoffment, lease or grant, shall not bind him before the age of 21 years; because he hath not perfect discretion or knowledge what he ought to do, or what is to his profit, or disadvantage before such age; and therefore he shall alledge that he was within age at the time of the Feoffment, Grant, or Lease made by him; by which it appeareth, that he shall alledge, that he had not perfect discretion at that time, for that nonage is an infirmity of nature, and cometh by the act of God; and a fortiori, 19.a. then he who is of non sane memoire shall alledge that he was not of Sane memoireat the time of his Feoffment, or Grant, for he who is of unfound memory, hath not any manner of discretion; for if he kill a man it shall not be felony, nor

niurder, He that neither avoyd it polea nor writ but his But it he bery at me this ban his rein also ul have and he But suring his lits on an office found y big shall arent

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5 E.3.Con. 24.contra.

murder, nor he shall not forfeit his lands or goods for the fame, because it appeareth that he hath not discretion, for if he had discretion he should be hanged for the same, as an Infant who is of the age of discretion, who committeth murther or felony shall be hanged for the same.

And it appeareth in Briting, that in debt upon a bond, the defendant faid, that he was not of Sane memorie at the time of making the bond, and holden it was a good Plea.

And if an Ideot doth release all his right by deed; yet if E Prerog. 34. it be afterwards found by office that he is an Ideot, the King Cost whi Sup shall seise the land, and that release shall not bind, &c. Quod vide in title scire facias, P.32 E.3. in the abridgments.

But in the book of Affifes, Anno 35 E.z. The Tenant in an Affife pleaded the release of the Plaintiff, and the Plaintiff faid, that he was not then of Sane memorie, &c. And there the opinion of two Justices was, that he should not compos mentis have that Plea; but I do not much regard their opinion for

Dam mon was brought the reasons aforesaid.

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E.3.Sc. fac.

And it appeareth in 7 Henry 4.5. That a Feoffment of an nation by a Ideot made by Letter of Attorny is void; and so it seemeth Sot, and ad- to be of a man of Non sane memoire.

And if a man of Non fane memoire alieneth his land in Fee F 10.12 E.4.8. and dieth, his heir shall have such Writ as may enter, as his 39 H.6.42. ancestors might have entred, as well as if an Infant within age had aliened his Lands,&c.

And in 24 E.2. in the Book of Affifes, a man of Non fance memoria made a Feoffment in fee, and took back an effate to himself for life, and there it was agreed and admitted that the same was a remitter, and thereupon issue was taken, that he was of perfect memory, &c. and that was found by verdict; which fee in title of Feoffments in the Abridg. ments.

And the Writ for the heir upon the alienation of his An- B

ceftors shall be in such form:

Rex Vic', &c. Præcipe A, quod, &c. reddat. B 20 acr. terr. enm pertin in N, quas clam.effe jus & hæreditatem fuam, & in quas idem A, non habet ingressum nisi per C vel alterum antecess. prædist' B cujus heres ipfe eft, qui illas ei dimisit, dum idem C non fuit compos mentis fue, ut dic. oc.

And thus in the Per and Cui :

Quas clamat, &c. & in quas, &c. nifi per C cui D avus pradict. B, vel alius anteceff pradict B cujus hares ipfe eft, illas dimilit, dum idem D non fuit compos mentis fue.

Or, thus in the Post;

Quas clamat, &c. Et in quas, &c. nifi poft dimiffionem, quams. quam C proavus, vel alius antecessor. prædict. Benjus hæres ipse est, dum idem C, &c. inde fecit H, ut dicit, & unde querit. &c.

C And 14 An.of the King, was such Writ granted:

D Præipe R quod,&c. reddat B unum redditum trium panum, fiptem lagenarum cervifiæ, & feptem ferculorum per septimanam tum pertin. in C,& quemidem B ei dimisit, dum non suit compos mentis suæ, ut dic. & nisi,&c. And the Process is Grand Cape,& Petit Cape, as in other Præcipe quod reddat.

### Writ of Intrusion.

E The Writ of Intrusion lieth, where Tenant for life, or in dower, or by the courtesse, dieth seised of such estate for life, and after their death a stranger doth intrude upon the land, he in the reversion shall have that Writ against the

intruder, and the Writ shall be such :

Rex Vic. &c. Præcipe A quod juste, &c. reddat B unam carucatam terr. cum pertin. in N, quam clamat esse jus & bæreditatem skam, & in quam idem A non habet ingressum nist per intrusionem quam in illam secit post mortem C, quæ suit uxor D quæ illam tenuit in dotem de dono præd. D, quondam viri sui patris vel fratris præd. B cujus hæres ipse est, ut dicit, & nist, &c.

And in the Per thus:

Et in quod idem A non habet ingressum nisi per C, qui illud dimisit post mortem D que suit uxor E, que illud tenuit in dotem de dono predist. E quondam viri sui.

And in the Per and Cui thus:

Et in quod idem A non habet ingressum niss per C cui D illud dimisit, quæ se in illud intrusit post mortem, &c.

And in the Post the Writ is thus:

In qua idem A non habet ingress. nist post intrus. quam C, is illud secit post mortem D quæ suit uxor E, quæ illud tenuit in dotem de dono predist. E quondam viris sui fratris predist. B cujus hæres ipse est, & quod post mortem prædist. D ad præsat. B reverti debeat, ut dicit, & unde queritur, & c. & niss. & c.

And so that word, & unde queritur was put in every Writ

of Entry in the Poft.

B

G And if a woman recover dower against him in the Reversion, or against his heir, and afterwards she dieth seised of that estate, and a stranger doth intrude into the land, Then he in the reversion shall have a Writ of Intrusion,

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and in the Writ mention shall be made of the recovery, thus, In quod idem A non babet ingressum niss per intrusionem quam in illud secit post mortem C, que fuit uxor D quod illud in Curia nostra coram Justiciaries nostris apud W per breve nostrum per considerationem ejusdem Curia recuperavit, ut dotem sum quam eam contingebat de libero tenemento, quod suit pradict. D quondam viri sui ne eadem villa versus pradict B, vel sic, versus W patrem vel alium antecessorem pradict. B cujus bares ipse est, ut dicit, & nisi, &c.

And so she shall have another Writ of another form, where she recovereth her Dower against the heir of her husband, and after the heir granteth the reversion unto the said B, and then the Tenant in Dower dieth seised, and a stranger abateth, the said B shall have a Writ of Intrusion against the stranger, and the Writ shall rehearse the whole special matter, which Writ appeareth in the Register.

And the Aunt and the Neecessall joyn in a Writ of Intrusion, and if the heirdoth assign Dower unto his Mother, and then commits selony, for which the Lord claimeth the reversion, and granteth the same to one in see, to whom the Tenant attorneth, and afterwards the Grantee of the reversion hath issue two daughters, and dieth, and one of them hath issue and dieth: Now the Aunt and the Neecessall joyn in that Writ,&c. and the Writ shall be such:

Rex Vic', &c. Pracipe A quod juste, &c. reddat B & M forori ejus, & P & F fratri ejus unum mesuag. &c. In quod idem A non habet ingress. niss post intrusionem quam H in illud secer. post mortem I que fuit uxor W, que illud tenuit in dotem de, &c. quondam viri sui de N pare predict. B & M, & avo pradicto P & F cujus hared.ips sunt, ex assign. T capital.dom. feodi illius, de quo prædicto I illud tenuit in dotem ratione felonia per W de S silium & hared.præd. W satta, ut dicitur. Et quod post mortem prædicti I ad præsat. B, M, P & F reverti debet per formam assign. prædict. ut dicunt, & unde queruntur,

[204] &c.

And if a man intrude after the death of Tenant by the A Courtefie, the Writ of Intrufion shall be such:

Precipe A quod Sc. reddat B. Sc. quod clamat, Sc. Et in quod idem A non habet ingressum, nist per intrusionem quam in islud secit post mortem D, qui illud tenuit per legem Anglia post mortem C quondam uxoris sue, matris vel amita prad. B cujus hares, Sc. ut dicit.

And in the Per thus:

Nisi per C quod illud ei dimisit, quod se in illud intrust, drc. ut supra.

And

And in the Per and cui thus :

Nisi per C cui D illud dimisit , quod se in illud intrust,

And in the Post thus:

Nisi post intrus. quam W in illud fecit post mortem C, quod illud tenuit per legem Angl.post mortem D quondam uxoris sua, matris praa.B cujus hares, &c. Et quod post mortem predict. C ad præfat. Breverti debet ut dicit, & unde queritur, &c. & nifi, O.C.

And if a man doth intrude after the death of Tenant for life; then he in the reversion shall have such Writ of Intrufion.

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Rex Vic. &c. Pracipe A quod juste, &c. reddat B, &c. in quod idem A non habet ingressum, nisi per intrusionem quam in illud fecit post mortem C cui predict. B, vel cui D pater vel alius antecess. pradict. B cujus hares ipse est, illud dimisit ad vitam ipfius Cut dicit, & nifi, &c.

And in the Per thus:

In quod idem A, &c. nisi per C quod illud ei dimisit qui se in illud intrus. post mortem W cui prædici. B vel R patr. vel alius anteceff.predict. B cujus hares, &c. illud dimisit ad vitam ipfius W,&c.

And in the Perand Cui thus:

In quod, &c. nisi per C cui Dillud dimisit, quod se in illud intrusit, oc.

And in the Post thus:

Nisi post intrus. quam Dinillud fecit post mortem I cui B,vel alius anteceff. prædict. B cujus hæres, &c. illud dimifit ad vita ipsius I. Et quod post mortem ipsius I ad præs. Breverti debet, ut dicit, & unde queritur.

And in the Register there are other forms of Writs, where the reversion of Tenant is granted by fine, or other-

wise, which shall be ex assignatione.

And the heir in tail shall not have a Writ of Intrusion; if a man do intrude after the death of Tenant in Dower, or of Tenant by the Courtefie, or after the death of Tenant for life; he in the reversion in tail shall not have a Writ of Intrusion, but he shall be put to his Writ of Formedon; for that Writ lieth for him who hath the reversion in Feesim. ple, or for term of life, and not for him who hath the Reversion in tail, or for term of years; for it lieth not but for him who hath a freehold, after the death of Tenant for term of life, or of Tenant in Dower,&c.

And he in the remainder shall have a Writ of Intrusion, if a man do intrude after the death of tenant for life; and fo

the affignee of the remainder shall have such Writ. If lands be given to two, and to the heirs of one of them, E

and he who hath the fee dieth, and then the Tenant for life dieth, the heir of him in remainder shall have such

Writ.

In quod, &c. nisi per intrusionem quam in illud ferit post mortem C que fuit uxor D, que illud tenuit ad vitam suam ex dimiff. quam R inde fecit eidem C, & præfat. D quondam viro Tuo, & hared. ipfius D patris pradict. B cujus hares, &c. ut dicit, & nisi, &c. And the process in that Writ is, Summons, Grand Cape and Petit Cape.

#### Writ Cui ante Divortium.

may He Writ of cui ante Divortium lieth, where the huf- F -band alieneth the wives Land, which she had in Fee-32 fimple, or in Tail, or for life unto a stranger in Fee-simple, & in Fee-tail, or for life, and afterwards tle Husband and YVife are divorced, then the wife shall have that Writ Invinagainst the Alience, and the form of the Writ shall be to her acho which:

Rex Vic' &c. Pracipe A quod juste, &c. redd. B qua fuit G uxor D unum mesuagium cum pertin. in N, quod clamat essejus & hareditatem fuam & in quod, &c. nisi per prædict.D quondam virum ipsius B quod illud ei dimisit, cui ipsa ante divor-

tium inter eos celebr. contradicere non potuit.

And that Writlieth in the Per, Cui, and Post, as doth the H

other Writ of Cui in vita.

And if the husband do alien unto an Abbot in Fee, and I afterwards the husband dieth, the wife shall have a Writ of Cui ante divortium, in the Post against the Successor of the Abbot, and the form of the Writ shall be thus:

In quod idem Abbas non habet ingressum nisi post dimiss. K quam prædict. D, quondam vir ipfius B cui ipfa ante divort. contradic. non potuit inde fecit L, quondam Abbat.de B, ut dic.

& unde queritur. &c.

And the heir shall have a Sur cui ante divortium, where the wife dieth before the action brought, as well as he shall have a Sur cui in vita: but of an estate Tail, the heir shall not have a Surcui in vita ante divortium, but shall be put to his Formedon in the Descender.

And the Aunt and the Neece shall joyn in that Writ, as L they shall do in a Sur cui in vita; and the process is Sum-M

mons, Grand Cape and Petit Cape.

Writ

# Writ of Causa matrimonii prelocuti.

A THe Writ of Causa Matrimonii praelocuti lieth, Where a woman giverh lands unto a man in fee-simple, unto the intent that he shall marry her, and afterwards he will not marry her within convenient time when he is required by the woman. Then the woman shall have that Writ, and the form of the Writ is such :

Rex Vic. &c. Pracipe A quod jufte, &c. redd. B unum me-B suagium, quod eadem Bei dimisit causa matrim. inter eos prælocuti, quo eam duxisse debuit in uxorem, & nondum duxit, ut dic.orc.

And in the Per and Cui thus:

In quod, &c. nifi per C cui prædict. B illud dimifit caufa matrimonii, &c. & non duxit, ut dicit, Et unde queritur. O.c.

And it seemeth that that Writ lieth for the woman, where the giveth lands to a man for term of his life, for the intent to marry her, as well as where she giveth it in feesimple. X But if the give it to a man in tail for to marry her, &c. although he will not marry her, it feemeth the thall not C.z. part 74. have that Writ against him, by that means to avoid and defeat the estate tail; for that shall be contrary to the Statute of Donis conditionalibus. And a man upon a condition in law shall not make void the Statute. For the Statute makes a law certain by express words of gift in tail. And then it is not reason that it should be anneinted by intend-ment, or by a thing averrable, which is not expressed, and Dy.146. shall be taken contrary to the Statute. And the heir shall have that Writ as well as the woman her felf, and the Writ fhall be:

Pracipe A, &c. quod redd. B, &c. quod clamat. &c. & in But if he quod non habet ingressum nifi per C matrem pradict. B, cujus express an bæres ipsa est, que illud ei dimisit causa matrimon &c. nondu marry chen duxit, oc. onifi, oc.

he may alien, but till

And it may be in the Per, Cui, and Post, as the Case is. And also the Aunt and the Neccemay joyn in the Writ. alienation And if a man do give lands unto a woman unto the intent he is feifed to marry him, although that the woman will not marry jure uxoris. him,&c.he shall not have a Writ Causa Matrimonii prelocuti cond.204. in that Case, and also that the woman do after marry him; to first Ind yet the woman shall hold the Land to her and her heirs, to first Ind &c. and if the husband do afterwards alien them, she shall + 2 04: have a Cui in vita for those lands.

Muzn de hoc ord 64 telon Sel: 32 6-364: Coly roly thenon 1224.6.2250

If a woman do enfeoff a stranger by deed of Land in G Fee, to the intent to enfeoff her, and one who will be her husband, if the marriage doth not take effect, she shall have the Writ of Causamatrimonii pralocuti against the stranger, notwithstanding that the deed of Feoffment be absolute; quod vi.in title Affife, 34 E. 3.lib. Affife.

A woman did enfeoff a man upon condition that he should take her to wife, and he had a wife at the time of the Feoffment, and afterward the woman for not performing of the condition, entred again into the land, upon the fecond Feoffee, and her entry was adjudged lawful, and the con-

dition is good, Anno 40 E.3.lib.Aff.

And the husband and wife may sue that Writ of causa I Matrimonii pralocuti against another who ought to have married her.

And if a woman maketh a Feoffment in Fee by Deed, K referving Rent, then she shall not have that Writ of Causa Matrimonii pralocuti for the Rent referved, because it is proved that the Refervation was the cause of the Feoffment; but if the hath a Deed to thew and prove that the Feoffment was to the intent that he should marry her, then she shall maintain her action notwithstanding the reservation made of the Rent.

Cition against X And a woman may sue a Causa Matrimonii prælocuti with- L out any writing shewed to prove the same, where she maketh a Feoffment without Deed to a man in fee, to the intent to marry her, &c. and the Process is Summons, Grand

Cape, and Petit Cape, Oc.

Writ of Entrie in Casu provifo.

THe Writ of Entrie in Casu proviso is given by the Stat. of M Gloucest. cap. 7. and that Writ lieth where Tenant in Dower doth alien in fee, for life or in tail, the land which The holderh in Dower; he who hath the Reversion in fee, or in tail, or for life, shall maintain that Writ against the alienee; and against him who is the Tenant of the freehold of the land during the life of the Tenant in Dower, &c. And the Writ may be made in the Per, Cui and Post, and the Writ shall be such:

Rex Vic. &c. Pracipe A, &c. quod redd. B, &c. quod clamat, oc. & in quod A, oc. nifi per C que fuit ux. D qui illud ei dimifit, que illud tenuit in dotem de dono prad. D quondam viri fui , patris vel alterius antteefforis prædict. B cujus bares, &c. & quod post dimiff. per ipsum C prafat. A contra formam

Bruinell. 24 H.8,9. its a good condition. 40 Aff.17. Condit.17. & Br. Condit.119. 8 E.z. Entrie

78.4c. of a

Condition expressed.

Note 3 &

14 H.S. 10.

4 Ma.Dy. 146. one L cannot aver a confideraa confideraall tion express by Deed . ? wid. 14 El. 6: Dy.211,212. formam statut. Glouc. de communi confilio regni nostri inde provisi, fact in feod. ad præf. B re verti debet per formam ejusdem Statuti, ut dicit, & nifi, &c.

And in the Per thus:

In quod idem A non habet ingressum nisi per C cui D quæ fuit uxor E illud dimisit, quæ illud tenuit in dotem, & quod post dimiff. &c.

And in the Post thus:

H

K

L

Præcipe A quod, &c. redd. B, &c. quod clamat, &c. & in quod, &c. nifi post dimissionem quam C que fuit uxor D, que illud tenuit in dotem de dono prædict. D quondam viri sui, patris prædict. B cujus hæres ipfe eft, inde fecit F & quod poft dimiffion. per ipfam G, &c. (ufque ibi) revertere debet per [206] formam ejusdem statuti, ut dicit, & unde queritur, & nif,

And if a woman do recover her Dower against the heir, and afterward doth alien in fee, the heir shall have the Writ of Casu proviso; and in the writ he shall mention the recovery, as he shall do in a writ of Entrie ad communem legem upon an alienation made by Tenant in Dower, &c. And although the woman alien in tail, or for life, yet the writ is alwaies of one form.

If a man grant the reversion of lands which are holden of his inherit. in dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in fee, the Grantee of the Reversion shall have such Writ d. assignatione.

Pracipe A quod, &c. redd. B, &c. & in quod, &c. nisi per Cquæ fuit uxor D, quæ illud de prædict. D tenuit in dotem de dono predict. D quondam viri sui ex assignatione, quam W filius & hæres predict. D inde fecit prafat. B, & quod post dimission. O.C.

And if the Heir grant the Reversion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the fame over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the reversion shall have such Writ De casu proviso.

Rex Vic. &c. Pracipe A quod, &c. reddat B, &c. quod clamat, &c. et in quod, &c. nifi per, vel post dimissionem,&c. (as the Case is) quam C que fuit uxor D, que illud tenuit in dotem de dono preditt. D quondam viri fui de præfat. B, ex assignatione quam E de quo præfat. C illud tenuit in dotem ex assignatione F de quo eadem C, illud tenuit in dotem ex assignatione quam G filius & hares praditt. D inde fecie praf.

praf.F inde fecit W. Et quod post dimiss. per ipsam C praf. A,

If the Writ be in the Per, and if the Writ be in the Post, C then the Writ shall be:

Et quod post dimissionem per ipsam C reverti debet per forma,

And the Aunt and the Neece may joyn in that Writ D where the Tenant in Dower doth alien in Fee, and they have the reversion by descent from their Ancestor, and the E Process is Summons, Grand Cape, and Petit Cape, &c.

### Writ of Entre in consimilicasu.

The Writ is not maintainable againft Tenants in Tail, after possibility of issue extinct. Old Tenure.

13 E.2. Entre congrable 56.

There is another Writ of the like nature, which is called F a Writ of Entre in consimilicasus; and that Writ lieth where Tenant by the Courtesse, or for life, or for anothers life doth alien in Fee, or in tail, or for life, now he in the reversion, who hath an estate therein for lise, or in Feesimple, or in tail, shall have that Writ during the life of the Tenant for life, who aliened, and that Writ is not given by the Statute of Gloucester: which gave the Writ of in Casu proviso, but is formed and granted upon the Statute of west-minster, 2. cap 24. Which wills, that as often as it shall happen in the Chancery, that in one case a Writ is sound and in the like case falling, wanting, the same remedy not, the Clerks of the Chancery shall agree in the making the Writ, and that appeareth, H.3 E.2.

And if the Tenant by the Courtefie doth alien, he in the G

Reversion shall have such Writ:

Præcipe A quod, &c. redd. B unum mesuagium, &c. quod clamat, &c. &rin quod, &c. nisi per C qui illud ei dimisit, qui illud tenuit per legem Angliæpost mortem E quondam uxor, sue, matris, proavæ, vel avæ præd. B cujus bæres ipse est, Et quod post dimissionem per ipsum C præs. A inde fac. in seodo ad præs. B, reverti debet per formam statuti in consimili casu provisi, ut dicit, & nisi, &c. Et in quod, &c. nisi per C qui D illud dimissit qui illud tenuit per legem Angl. Et in quod, &c. nisi post dimissionem quam C qui illud tenuit per legem Angliæ, &c. ut supra, cujus, &c. inde secit F, & quod post dimissionem, &c.

And if the Tenant for life alien, then he in the reversion

Rex Vic. Sc. Precipe A quod juste, &c. reddat B unum mesuagium, &c. in quod idem A non habet ingressum nist per C, cui præd Billud dimis. ad vitam ipsius C, & quod post dimisidimissionem per ipsum C. præfat. A. inde fac. in feodo, ad præfat.

B. reverti debeat per formam Statuti, &c. ut iupra.

And note, that by that Writ is appeareth, that the Writ doth suppose, that the Tenant for life doth alien in Fee; and although he grant but for life, or in tail, yet the writ doth suppose that he alieneth in Fee, &c. But that is not material: for if it be in Fee, or in tail, or for life, it is a forseiture of his estate.

And so in the case, in the writ in Casu proviso, and in the writ of Entre ad communem Legem, it supposets the alienation to be made in Fee, alchough it be but for life, or in tail, for that there is no other form: and it may be made in the Per, Cui and Post, and that without title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant who alieneth: but if the Father or other Ancestor lease for life, and dieth, and afterwards the Tenant for life alieneth in Fee,&c, and now the Heir who is in the reversion, shall have a writ, which shall comprehend a title in it, and shall be such:

Rex Vic. &c. Præcipe A. &c. quod, &c. redd. B. unum mesuagium, &c. quod clamat, &c. Et in quod, &c. niss per C. & D. uxor. ejus, quibus l. pater, vel mater, vel alius antecess. præd. B. cujus hæres ipse est, illud dimisst, ad vitam ipsorum C. & D. & quod post dimissionem, &c.

And there the writ doth suppose, that the wife did demise it,&c. and yet she shall have a Cui in vita after the death of her husband, to recover the Free-hold, notwithstanding the alienation made by her husband. And if Tenant for life grant his Estate unto another, and the Grantee alieneth in Fee,&c. then the Writ shall be:

In quod idem A. &c. nisi per C. cui D. qui illud tenuit ad vitam suam ex dimissione præd.B. illud dimisit ad eundem termi-

num, & quod post dimiss. &c.

And if a man lease Lands for term of life, and afterwards dieth, and his Heir grants the reversion to B. and the Tenant attorn, and afterwards the Leisee for life granteth his Estate over to one who alieneth to A. in Fee, now B. shall have such writ:

Precipe A. quod &c. redd. B. &c. in quod, &c.. niss per C. qui illud ei dimist, qui illud tenuit ad vitam D.de præf. B. ex assign. quam I. silius & heres R. qui quidem R. illum præf. D. dimist ad eundem terminum, inde secit præf. B. & quod post dimis. &c.

If H. lease Lands unto R. for life, and afterwards granteth the reversion to B. in Fee, and R. attorn, and afterwards R.

alieneth in Fee, B. Shall have this Writ.

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Rex Vic' &c. Pracipe A quod, &c. redd. B in quod, ere. nisi per R qui illud ei dimisit, qui illud tenuit ad vitam suam de præf.B ex assign. quam I qui illud præfat.R dimisit ad eunde terminum, inde fecit praf.A,& quod post dimis,&c.

And if Lands be given unto two, and the Heirs of one of B them, and he who hath the Fee dieth, and afterwards the Tenant in life alieneth in Fee, the Heir of him in the re-

mainder shall have this Writ:

In quo, &c. nisi per C qui illud ei dimisit qui illud tenuit ad vitam fuam ex dimiffione, quam H inde fecerit eidem C & D, & hared.ipfius D patris pradict. B cujus hares ipfe eft, & quod post dimissionem, &c.

And by that appeareth, That he in the remainder shall Vide 3 E.2. Entre 6. have a Writ of in consimilicasu, if Tenant for life alien in contra. For it is

But Weft.2. cap.24. fee 206,fol.

And if an Abbot or Prior lease Lands for life, and a- C not given by lieneth, and the Prior dieth, the Successor shall have this of Gloucester, Writ. Pracipe A quod, &c. redd. Bunum mesuagium, &c. quod

clam. effe jus Eccles. Sue S. Thomæ Martyris de K, & in quod, &c. nisi per C cui D illud dimisit, qui illud tenuit ad vitam suam ex dimissione quam S. quondam Prior de K præced. præd.

Prioris inde fecit præf. D, & quad post dimif. &c.

And if Tenant in tail make Lease for life, and the Tenant D for life alieneth in Fee, the Tenant in tail shall have a Writ in consimili Casu. And so it seemeth, if Tenant in tail do lease the Land unto another for the life of the Lessee, and dieth, and the Tenant for life alieneth in Fee; the Heir in tail may choose to have a Formedon, or to sue the Writ of consimilicasu, living the Tenant for life. For the Tenant in the action shall not have the Plea to abate the Writ, to fay, that he hath title to have a Formedon of the Land, But if Tenant in tail leafe Lands for the term of his own life, which is not any descent, and afterwards the Tenant for life doth alien in Fee, and the Tenant in tail dieth, his Heirs shall not have a Writ of Consimili casu, but shall be put to his Formedon in that case. For there he hath not title to have any other action by colour of any demise: but in the case before, he had title by reason of the discontinuance made for life, to claim by reason of the right in reversion descended to him, so that he had right by reafon of the reversion in his Father reserved upon the lease, and also by reason of the title of the entail to choose what

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A Lease was made to one for term of life, the remainder unto another in Fee, and afterwards the Tenant for life did alien in Fee, for which he in the remainder brought a writ de consimili Casu, and the Writ was abated, Pas.7. E.3. But the Court there faid, that the cause was, because he in the remainder was not to have the remainder in facto until it fell, and that after the death of Tenant for life; and it is not like unto a reversion: but the Law is not taken so at this day, but that he in the remainder hath the remainder vested in him, as he in the reversion hath the reversion: for he shall have an action of waste, and shall enter for the alienation of his Tenant, as well as he in the reversion, and therefore it followeth, that the remainder is in him in facto, for which cause I conceive, that Judgment was not rightly F given. And Hil. 18 E.2. it was holden by Justice Herle, that the Writ did lie for him in the remainder, &c. And the heir in tail brought a Writ of Consimili casu upon an alienation made by Tenant by the Courtefie, and the Writ was maintainable. T.31 E.1.

### Writ of Entrie ad communem Legem.

The Writ of Entrie ad communem Legemlieth, where Tenant in Dower, or Tenant by the Courtesse, or for life, do alien in see, or for the life of another, or in tail the Lands which they hold,&c. after their death, he in the reversion, who hath it in Fee or for life, shall have that Writ of Entrie ad communem Legem, and the Writ shall be such, &c.

H Rex Vic. &c. Præcipimus A quod juste, &c. redd. B, &c. quod clamat esse jus & hæreditatem suam, & in quod idem A non habet ingressum, nist per C quæ suit uxor D quæ illud ei dimist, que illud tenuit in dotem de dono præd. D quondam virisui patru vel alter antecess. prædict. B cujus, &c. ut dicit, &c. & nist. &c.

And that is a Writ for the Heir in the reversion, who hath the same by descent, and may be in the Per, Cui, and Post.

And if a woman recover Dower, and afterwards alieneth in Fee, and dieth: then the Writ of Entrie ad communem Legen shall mention the recovery,&c. and if Tenant by the Courtesse alieneth in Fee, and dieth, the Heir shall have such Writ:

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Pracipe

Præcipe quod,&c. redd.B,&c.quod clamat,&c. in quod idem A non habet ingressum nisi per C, qui illud tenuit per legem Angliæ post mortem D quondam uxoris suæ, matris præd. B enjus hæres ipse est, ut dicit,&c.

And may be brought in the Per, Cui and Post, as the Case

And if Tenant by the Courtefie alien the Fee, and dieth, he in the reversion who is Heir in Feesimple, may sue that Writ, or an Assis of Mortdauncestor given by the Statute of Gloscester, cap. 2.

And if Tenant for life alieneth in Fee, and dieth, he in C the reversion may have that Writ in divers forms. One, if he have the reversion by descent, the Writ shall be:

Præcipe A, quod, &c. redd. &c. quod clamat, &c. & in quod idem A, non habet ingressum nisi per C, cui prædiet. B vel D pater, vel alius antecess, prædiet. B, cujus hæres, &c. illud dimisit ad vitamissius C, ut dic. &c.

And he may leave out these words in the Writ, Quod clamat esse bureditatem suam, &c. When the Demandant made the grant to the Tenant for term of life who

aliened.&c.

And that Writ may be in the Per, Cui and Post, as the case D is. And he may bring a Writ of Ad terminum que preteriit E if he will, if the Tenant for term of life doth alien, and

dieth, as it shall please him.

And if Tenant for term of life do grant over his Estate F unto another, and he in the reversion granteth the reversion in Fee, and the Tenant doth attorn; and afterwards the second Grantee doth alien in Fee, the Grantee in the reversion shall have such Writ.

In quod idem A non habet, &c. nisi per C qui illud ei dimisit, qui illud ad vitam suam tenuit de præf. B, ex assignatione quam I qui illud præf C dimisit ad eundem terminum inde secit præf.

B, ut dicit.

And it may be in the Per, Cui or Post, as the case is, and G

in the Writ which is in the Post, shall be this clause:

Et que post mortem prædist. Cad præsatum B, reverti debet per sormamassignationis prædut dicit, & unde queritur,&c. ut dicit,&c.

# Writ of Ceffavit.

He Writ of ceffavit lieth in divers ways. For one Writ is where there is Lord and Tenant, and the Tenant will not pay his Rent, nor do his Services, as suit, &c. to his Tenant in Lord as he ought to do, nor hath fufficient Goods or Chat-Dower shall tels upon the Land to be distrained for the Rent or Services have a Cofbehind; but suffereth the Lands to lie fresh, not occupied favir, and for two years following together; then the Lord of whom lie the feifin the Lands are holden, may have the Writ against the Te- in her hus-nant, and if it be found for him, he shall recover the land, if Cessavit 54. the Tenant will not find Sureties to pay the Rent then after; 43 E.3.15. and that Writ is of such form:

He for life shall have Ceffavit, but not Leffee for years: for that is a Tracipe. 12 R.2. Ceffavit: 45 Ceff. of a Rent. 5 H. Ceffavir of Advomfon; 23 E.3. Ceffavit 46.46.43 E.3.15.ac.

Rex Vic.&c. Præcipe A quod, &c. redd. B unum mesuagium, &c. quod idem A de eo tenet per certa fervitia, & quod ad ipsum B reverti debet per formam Statuti de communi Consilio regni nostri inde provifi, eo quod prædict. A, in faciend prædict. ervitia per biennium jam ceffavit, ut dicit,&c.

And that Writ is given by the Statute of West. 2. cap. 21.

and may be brought in the Per, Cui and Post.

D

E

F

The Per thus: In quod idem A, &c. nisi per C qui illud di- 48 E.3.4. misit, qui illud de praf. B tenuit per certa servitia, & quod ad The feifin ipfum B,&c. (ufque ibi) provifi, eo quod pradict. A, vel eo quod was alledgprædict. C in faciend. prædict. servitia per biennium jam ed in the the Ceaser

And it ought to be alledged in the Writ by whom the in the Fe-Ceaser was.

offee, 39 E. 3. And in the Per and Cui thus: In quod, &c. nifi per C cui Br. C.f. 19.

Dillud dimisit, qui illud de præf. B tenuit, &c. And in the Post thus : In quod, oc. nist post dimissionem Note that if quam A, qui illud de præfat.B tenuit per certa fervitia , inde himfelf

fecit A de E, & quod ad ipsum R reverti debet, eo quod præd. ceafe, the Oc. ut dicit, Oc. Et unde queritur, Oc. nifi, Oc.

the Feoffee Writ shall not be in the

Ter but general, cont.if the Feoffor cease before the seoffment, so if the Disseise cease before the diffeifin, the Writ shall be in the Toft, 21 E. 3.44.Br. Ceff. 17.

And there is another form of ceffavit, without making mention of any Entry, thus:

Pracipe W de F, & A uxori ejus, quod, &c. reddant Abbati de S duo mesuagia, que I de B de eo tenuit per certa fervitia, & qua ad ipsum Abbatem, &c. eo quod predict. W & A infa-

And the Cessavit lieth for suit of Court: but the Donor I in tail shall not have a Cessavit against the Tenant in tail:

44 E.3.27

14 H 6.15

15 E.2.

15 E.3.

16 In that case the Lord of whom the lands are cessavit against the Tenant in tail, there, in that case the Lord of whom the lands are holden immediate, shall have a Cessavit against the Tenant is 13.4, & 35. in tail, because that he is Tenant to him, &c.

33 H. 6.53.

se. but there it is faid, that if the Tenant cease, and makes a gift in tail, that the
Lord may have Cessaws in the Ter.

10 E.4.1; & 2. 37 H.6.45. he pleads that the Land was fufficient to his diffress without and good: 2 H.4, 5 .. 35 H. 6. Ceff.7. ac. 35 H. G. Cef. 7.ac. but if a man occupy at will, his goods are fufficient 3 E 2. Avor. 206. Br. App.20. 3 E.3.47. Ceffauit 40. 4 H.6.29. 10 H. 7. 24.

45 E.3.27.

14 H.6.25.

48 E.3,4.

48 E. 3,4,

33 E.s.

Wilby, Cefs.

Ceffavit be-

fore feifin :

And if a man cease to pay his Rent and Services for two years, and inclose the land, soas the Lord cannot distrain, if he break not the gates, or the hedges of the land which make the inclosure, the Lord shall have a <code>eessylavit</code>, although the Tenant hath sufficient Cattel upon the Land to be distrained for the Rent. For the land ought to be open, and his distress without faying <code>sourn</code>, ficient upon the lands to his distress, if there be not sufficient upon the lands to his distress, c. and so open to his distress, is a good plea, without saying more in such case, <code>M.2 H.4.5</code>.

And if the cattel of a stranger do escape into the lands, A those cattel are not sufficient or overt to his distress: but if they be the Tenants cattel, it is otherwise.

If three men hold by one entire Rent, as by a Horfe, and B the Lord doth recover two parts of the land against two of them, and the third findeth Sureties, &c. the whole Rent is extinct by that recovery.

And a man shall not have one *ceffavit* for lands which c are holden by several Services; but he ought to sue several Writs.

If the Lord do distrain pendent his Writ of Ceffavit a-D gainst his Tenant, the Writ shall abate.

And the Lord shall have a Writ of Cessarins against Te-E nant for life, where the remainder is over in Fee to another.

The quantity of the Services is not traversable in a cef- F favit, but the same shall be taken by protestation.

The feifin of the Services is not traversable in a ceffavit, G but in ceffavit generally the tenure is traversable.

The Aunt and the Neece shall not joyn in ceffavit for a H
Ceaser made before the title accrued to the Neece: but for
a Ceaser in both their lives they shall joyn in a Cessaria.

And

And a man may have a Ceffavit against several persons, and 20 E. 3. several Tenants by several Practifes, &c. but not by one Practifes at 11 E. 2.

A Cessavit doth not lie for him in the reversion against E.2 16.51.

Tenant for life, nor against Tenant in Dower, but against 26 E.3.

Tenant by the Curtesie by the Lord Paramount, because he cess. 61.

I is Tenant to the Lord Paramount, Tamen Quere of that case. 7 H.4. 20.

But Tenant by the Curtesie, Tenant in Dower, or Tenant

for life shall have a cessavit against the Tenant who ceaseth.

It is a good Plea in a Cessavit to say that he did not cease

for two years before the writ brought.

And by the opinion of Thorp and Hankford, a manshall not have a cessaria against an Abbot or a Prior of the lands of 18 Ass. their foundation: but I know no difference but that the Lord 2r. Cess. 200 shall have a cessaria against an Abbot or a Prior as well as against others of the Lands which he holdeth of them by Rents, or other Services: but for the lands which they hold in Frankalmoign, a cessaria to do not lie for not doing the Service, neither doth a cessaria lie for not doing homage or fealty.

And if a man holdeth lands in feveral Counties by one Teture, and one Service, if he cease, &c. a Cessavit doth not lie.

Quod vi. M. 18. E. 3.t. Affife.

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And there is another Writ of Cessavit grounded upon the Statute of nessav. 2. cap. 41. That if a man give Land unto a Religious House, or unto another to find a Chaplain to sing Divine Service, or to find certain Tapers to burn before such an Image, or to distribute certain bread and beer every week unto poor men. Now if these Services be not done for two years, nor sufficient distress upon the lands for the time to distrain for those Services, then he or his Heir who gave the lands, shall have a Writ of Cessavit, thus:

Rex Vic.&C.Præcipe S.Episcopo Wigorn.quod,&c.reddat H.Comiti D.unum mes.&c.in villa de W.quod M. nuper Comes D.frater præd.H.cujus heres ipse est, dedit W.quondam Episcopo W. & suc-essoribus suis Episcopis loci præd.ad celebrandum annuatim obitum I. fratris & B.matris præd.T. & etiam obitum ejusdem T. & R.de H. post eorum ågeess. Et quod ad præs. Comitem reverti debet per forman,&c.in quod præd.Episcopus in celebrand. obitum præd.

per biennium jam ceffavit, ut dicit, T. &cc.

Et aliter pro Chantaria: Precipe Abbati de N. quod, & c. reddat B. & C. uxori ejus unum mes. & c. quod R. proavus præd. G. cujus hæres ipse est, dimisti E. quondam Abbati de N. vel eidem Abbati & success. jus Abbatib. de N. ad inveniend. quendam Canonicum pro animabus antecess. & success. ejus em R. in Abbathia de N. divina celebrant. Et quod adpres. B. & C. reverti debet per formam

formam Statuti de communi confilio regni nostri super bujusmodi dimissi provisi, eo quod præd. Abbas in inveniend, præd. Canoni-

cum per biennium jam ceff. ut dicit, de nifi, &c.

And the like Writ may be fued against a Parson for Lands given to his Predecessor in Fee, to say Divine Service in such a Chappel from three weeks unto three weeks.

And so a man shall have such Writ for lights, or for drinking for the Poor, or other Almsdeeds, if the said Almsdeeds

be withdrawn for two years together.

And where a Religious man, or other spiritual person, bringeth that Writ of Cessavit, it shall not be said in the Writ, Quod clamat esse jus or hereditatem suam, &c.

And a man shall have a cessavit for not doing of several

things which he ought to do thus.

Præcipe A. &c. quod, &c. reddat B. &c. quod T. quod proavus prædict. B. dedit W. quondam rectori, &c. & sucess.

[210] suis rectorib. &c. ad inveniend. quendam Capellanum divina pro animab. antecess. ejusalem T. in Eccles. &c. celebrantem, & duos cereos arsuros toto tempore, quo Missa illa dicitur. Et qd. ad ipsum B. reverti debet, eo quod prædict. &c. in inveniend. præd. Capellanum, & cereos per biennium jam Cessavit,

And the like Writs may be made in the Per, Cui, and

Poft.

There is another Writ of Coffavit founded upon the Sta-A tute of Gloucest. cap. 4. where a man giveth certain lands in Fee farm, to find him certain estovers to burn in the Winter, &c. or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he ceaseth, and lets the land lie fresh, not manured for two years together; then he or his heir who gave the land, shall have the Writ of Cossavit which followeth, viz.

Rex Vic. &c. Præcipe A. quod, &c. reddat B. unum mes. &c. quod idem B. es dimissit ad seodi sirmam, reddende inde per annuneidem B. tertiam partem vel quartam partem veri valoris mesuag. prædist. & quod ad ipsumreverti debet per formam Statui de communiconssisio regni nostri inde provis, eo qd. præd. A. in solutione prædist, sirm. per biennium jam Cessut dicit, &

wifi, &c.

And in the Per thus: Et in qd. idem A. non habet ingress. nist per E. patrempred. B. cujus hæres ipse est, qui illud ei dimissit ad feodi sirmam. Vel sic in the Per & Cui: Nist per D. Cui præd. B. vel C. pat.præd.cujus hæres ipse est, illud dimissit ad stodi sirmam.

And

And in the Post thus: Nis post dimiss. qui prad. B. vel C. pat. prad. B. cujus bares ipse est, inde secit D. ad seedi firmam, &c. es seis ut dicit & unde queritur, &c. et nis. &c.

B And if a woman give lands in Fee farm, rendring to her the moity, or the third part of the value, and afterwards taketh Husband, and the Tenant ceafeth for two years, and fuffereth the land to lie fresh, and doth not pay the Rent, the husband or wife shall have a Writ of cessavit, and the Writ shall suppose Qued ad predict. A. & B. (his wife) re-

verti debet, and not to the wife only.

And note that these gifts in Fee sarm, to render the third part, or the sourch part, or to find a Chaplain to say divine Service, or to find him clothing or estovers, or to distribute, &c. upon which a Writ of Cessavit lieth, it behoveth that this were made before the Statute of Quia emptores terrarum, &c. upon which seossiments a Tenure is reserved and implied in the gift. But if a man at this day after the Statute of Quia emptores, will give lands in Fee sarm to sender the third or the sourch part of the value of the land, or to find a Chaplain, &c. if the Tenant ceaseth, &c. the Donor nor his heir shall not have a writ of Cess. because there is not any tenure betwixt them. Quod vide M.45.E.3.t.Cess.

But if a man giveth lands in tail at this day to find a Chaplain, or to render a third part to the yearly value, or to find eftovers yearly, if the Tenant ceafeth of these Services, it is a doubt whether the Donor shall have a Cessavit to recover the

lands.

And it seemeth that the Donor shall have a cessavit: for a writ of cessavit is given by the Statute of west. 2. cap. 41. for lands given to find a Chaplain, or to find Tapers, or distribute alms to poor men. But then it seemeth that the same is intended of gifts in Fee-simple, because that the Statute

of westm. 2.cap.41. faith :

That an Action shall lye for the Donor or his Heir to demand the Lands so given in demess, as it is appointed in the Statute of Glocester of tenements demised to do, or render the fourth part of the value, or more, and upon which feosyments a tenure was reserved and implyed, because the Statute of Quia Emptores,

&c. was made after the Statute of Westm.2.

And also before the Statute of Quia Emptores terrarum. If a man make a Feoffment in Fee, and doth not say of whom the Feoffee hall hold, &c. then the Feoffee ought to hold of the Feoffor and his heirs. By which it appeareth, that if a man at the time of the making of the Statute of welt. 2, give lands to hold in Fee farm, rendring the value, or the third M in 2

part, &c, that he held of the Feoffor, and his heirs, although that no tenure was expressed therein. And the Statute of Gloceft. was made Anno 6 E.I. and the Statute of westm. 2. made Anno 30 E.I. and the Statute of Quia emptoresterrarum, was made Anno 18 E.I. And therefore if a man maketh a Feoffment in Fee at this day, to find Tapers burning, or to render the third part of the value, or the like Services, he shall have an action of Covenant upon that feoffment, if it be made by deed indented, and no other remedy for the fame, as I conceive.

And if land be given before the time of memory to find a D Chaplain to fing in his Chappel within his Mannor every week. Now by the Statute no man shall have a cessavit for the Ceffor of such service, but the Donor or his Heir: but upon that special matter, he shall have a special Writ for him who is feifed of the Mannor, if he and his Ancestors have been feifed of the Mannor time out of mind, against

him who ought to do Service. T. Anno 7 H.2.

And a Ceffavit doth not lie against an Abbot or Prior for E a Ceffor of Services of Lands which they hold in Frankalmoigne, because no Service certain is expressed in the gift. Also it appeareth before the Statute, that the Lord could not have a Ceffavit against the Tenant, but that he may feise the lands for the arrearages of the Rent or Services by Judgment of the Court if it were found that they were behind, Quod vi.P.20 H.3. But at this day he cannot do so, but bring a Ceffavit.

# Writ of contra formam Collationin.

Vide z & Ma. Byer Yet it feems by Br. Aliemation I 5. that Bishop, Fee. Dean, and

THE VVrit of contra forman collationis heth, where a F man giveth Lands or Tenements to an Abby, or other House of Religion before the Statute of Quia emptores terrarum, to hold of him in Frankalmoigne, and afterwards the Abbot or the Covent do alien the same land unto another

Chapter, and other who are not Religious, are not within this Statute. 40 E. 3. 27. The Writ doth not lie but where the Land is given in Frankalm.

> The Donor or his heir may fue that Writ of Contra for- A mam Collationis, and that Writ alwaies ought to be fued against the Abbot who aliened or his Successor, and not against the Tenant of the land. But when he hath recovered the land agaitst the Abbot or his Successor, then he ought to

fue forth a Scire facias against the Tenant of the Freehold of the land, and the Tenant may plead in bar matter, which may prove that the Demandant hath no title, or that he B hath released his title. And if he who recovereth by the Contra formam Collationis doth enter upon him who is Tenant of the Freehold of the Land, then it feemeth the Te-

nant shall have an Affise against him.

And that Writ of Contra formam Collationis, lieth only for him or his Heirs, who gave the land in Frankalmoigne, and not by any stranger. But if he who ought to have the action dieth, and doth not bring any action for the same, yet his heir may bring the action for to recover the land. For the alienation doth give right and title to him who gave the lands, or unto his heirs for to recover the lands, and to have the lands again for that alienation. And it lieth against the Successor upon an alienation made by his Predecessor. And yet fuch Writ brought against the Successor, upon the alienation made by the Predecessor was abated. H. 17 E.3. Contra for-

D But yet notwithftanding it seemeth the Writ well lieth, be- man Coll. cause that the right is given to him who gave the lands, and 12 H.4.17. unto his heirs to have the lands again by the Statute, and Hank-ford that right cannot die. For the heir shall have the action cont. to Fuz. upon the alienation made in the life of the father, because here. the right of the action doth descend, and by the same reafon the heir of the Donor shall have the action against the Successor upon alienation made by the Predecessor, because the right doth accrue to the Donor or his heir by alienation. for which cause it is reason that he have the action against the Successor to recover that right, and to prove the same; the form of the Writ in the Register is such:

Rex Vic. Dr. Pracipe Abbat.de N. Gc. quod, Gc. reddat B unum mesuag. &c. quod eidem domui collatum fuit in liberan eleemofynamper præd. B, vel per H patrem præd. B cujus bæres ipfe eft. & quod per alienationem per ipfum Abbatem, vel per R quondam Abbatem de N prædeceff. predict. Abbatis contra formam collationis præd. inde factæ in feodum ad præfat. B reverti

debet, ut dieit, &c. nifi,&c.

And that Writ of Contra formam collationis doth not lie, 21 H.4.58. although the Abbot alien in Fee, &c. but where the Abbot Hank-ford.

and Covent in Fee,&c.

And if a man do recover in value lands againft an Abbot, Old Aff. 14. who entreth in the Warranty and loofeth, &c. the Founder It licth of a shall have a Contra formam collationis upon the same, as it Rent. appeareth in the book, M.45 E.3.18.

Mm 3

28 E. 3. Contr. form. cellation. 6. If an Abbot and Covent alien an advowson in Fee, at the F next avoidance the Founder or his heir may present unto the advowson, because they cannot sue a Contra formam collationies.

And if an Abbot and Covent alien the lands which are G given by the King in Frankalmoigne, forme say that the King may enter: but it seemeth that he ought for to sue forth a Scire facias upon an Office found of the said alienation: See the Case M.45 E.2.18.

And that Writ of Contra formam collationis is given by H the Statute of Westm. 2. cap. 41. and the process is Summons,

Grand Cape and Petit Cape.

43 H.6. 6.

And a Writ of contra formam collationis lieth as well for I land which was not given for the foundation of the Monastery, if it were given in Frankalmoigne, as for lands of the foundation: but it ought for to be given in Frankalmoigne before the Statute of Quia Emptores, &c. For a man could not give lands after the Statute of Quia Emptores, &c. unto an Abbot or Prior to hold in Frankalmoigne, because he ought to hold of the Lord Paramount, of whom the Tenant held before. But the King at this day may give lands in Frankalmoigne to an Abbot or Prior, for that he is not bound by the Statute. And also the King may license his Tenant to give lands unto an Abbot or Prior in Frankalmoigne in Feesimple, to hold in Frankalmoigne: for he may dispense with the Statute, and grant such authority to his Tenant if he will. But it feemeth another Lord cannot grant fuch License to his Tenant, by reason of the Interests of the Lord Paramount; but the King and all the Meine Lords together may get Licenses unto the Tenants Paravaile, who hath the Fee of the Lands, that they may alien the same to an Abbot or Prior to hold of him in Frankalmoigne, or to grant the same unto a lay person, to hold of him by certain Services, because that the Statute of Quia Emptores, &c. was K made only for the advantage of the Lords, and therefore they all may dispence with the Statute, which see t. contra formam collationis, Lib. d'Ent. 119. And there it appeareth, that the heir shall have the action against the Successor of the Abbot, who aliened in the time of his Ancestor.

# Writ of Formedon in the Discender.

He Writ of Formedon in the Discender is grounded upon the Statute of westm.2. cap. 1. and lieth where a man giveth Lands to one, and the heirs of his body begotten: Or unto a man or a woman, and to the heirs of their bodies begotten: Or unto a man and a woman who is his Coufin in Frank-marriage, by force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth, his heir shall have that Writ of Formedon in the Discender to recover the Lands given in tail.

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And so upon every Gift in tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be diffeifed or deforced thereof, and dieth, he who is heir unto the Lands by force of the Gift, shall have that Writ of Formedon in the Discender, against him who is Tenant of the Lands or Tenements, or Pernor of the profits of the same Lands or Tenements. But that Writ against the Pernors of the profits is given by the Statute of Anno 1 H.7. cap. 1.

And in special Case, a man may have a Formedon in the Discender of profit apprend' in any Lands or Tenements, or issuing out of any Lands or Tenements: As if a man grant 20 s. or 20 l. issuing out of any Land or Tenement, unto a man, and the heirs of his body begotten; or unto a man in Frank-marriage with his Daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his heir who is his Son or daughter, shall have the Writ of Formedon in the Discender of that Rent.

And so if a man grants the moiety of the profits arising out of his Mill unto another man, and the heirs of his body, and the Donee dieth, and his heir is deforced of the profits, the heir shall have a Formedon in the Discender for those

profits, and the form of the Writ is fuch:

Rex Vic. &c. Pracipe W Magistro Hospitalis S.T. Martyris de S. quod, &c. reddat I.C. medietatem exituum provenientium de duobus molend. ipsius Magistri in M, quam B quondam Magifter Hofbitalis, oc. dedit W de C & haredibus de corpore fue

exeunt. & que post mortem, &c.

And so it seemeth, That if a man granteth to one and the Heirs of his body, pasture for twenty Oxen, or for an hundred sheep,&c. and the Donee dic, and his Son, who is his heir, is deforced thereof, then he shall have a Formedon in the Discender, and the Writ shall be:

Mm 4

Rex Vic. &c. Pracipe, &c. quod reddat A.B paftur. ad viginti hoves, vel ad centum oves in centum acris terræ in M,

quam, &c.

But if a man granteth Common of Pasture to one and the Heir of his body begotten, which hath Cattel, and the Donee dieth, and the heir is deforced of the Common, the heir shall not have a Formedon in the Discender of the Common, but a Quod permittat, in the nature of a Formedon, and shall count upon the Gift and the special matter. But the Writ of Formedon is an action Auncestrel. For if he who is feifed by force of the tail be diffeifed of the Land, he shall have an Assise of Novel Disseifin, or an action of trespassat his pleasure, and not a Formedon. And what manner of Gift shall be said a Gift in tail, and whar not appeareth by Mr. Littleton in his Chapter of Estate tail, and therefore it is not necessary to express the same here. But the forms of the Writs of Formedon are many, as appear-D eth by the Register thus:

Rex Vic', &c. Præcipe A quod, &c. reddat B manerium de N cum pertin., quod C dedit D et E uxori ejus , et hared. de corporibus ipsorum D et E exeuntibus, et quod post mortem prad. D et E prafat. B filio et haredi pradict. D & E descendere debet per formam donationis prædia. ut dicit, o nifi,&c.

And if the Gift be made in Frank-marriage, then the 22 H.6.36. form of the Writ is fuch : Quod C dedit B in liber.maritag. cum fil. ejusdem C, et quod post mort. predict. Det E, praf. B fil.

et hared. prad.D et E defeend. debet,&c.

And in his Writ of Formedon he ought for to make mention of every man who was feifed by force of the tail, and to name him Son and Heir in his Writ, in this manner: Et quod post mortem prædict. D, et E, et F filii & bæredis eorundem D et E, præf. B filio et hæredi ejusdem F descendere debet.&c.

But if any of the Heirs in tail were not seised by force of the tail, but overlive their father, and die before that they enter into the Land, or have any feifin thereof: then they need not for to name them Heirs in the Writ, but only some in this manner:

Et quod poft mortem prædict. D et E filii ejusdem D, et F filii predict. E pr. fat. B filio prodict. F, et consanguineo et bæ. redi pred. D descendere debet, &c.

And so he ought alwais to make the demandant Cousin and Heir, or Son and Heir to him who was laft feifed of the tail, as the Case is: and the surest way for the Demandant is, to make every man who is named in the Writ, Son and

Heir

Vi. 2 Eliz. Dyer 215.

2 H. 4.19.

Heir in the Writ, although they were not feifed of the lands by force of the tail, for it is not material whether they were feifed or not, although he name them Heir in the Writ, Quod

vi. Anno 8. and 11 H.6.

And if Tenant in tail hath iffue two Sons, and dieth, and a stranger abateth, and entereth into the Land, and afterwards the eldest Son dieth before he entreth into the land, the youngest Son shall have a Writ of Formedon in the Discender, and needeth not to name his eldest brother heir to his father in the Writ, but only Son, because he never had seisin of the land, but only held the Estate: but if the eldest brother had entred, and was seised by force thereof, and died without heir of his body, then the youngest Son who is his brother and heir, ought to mention the eldest in the Writ, and to name him Son and Heir to his father, and to make himself brother and heir unto him.

And if the heir intail be feifed by force of the tail or not, and after enter into Religion, and be possessed, then his heir shall have the Writ of Formedon in the Discender in

fuch form:

Et quod post mortem præd. D, et postquam E, filius et hæres præd.D habitum religionis assumpsit, in quo habitu prosessus suit, ut dicit, præsat. B filio et hæredi ejusdem E descendere de-

bet doc.

But if the father maketh a feoffment in fee, or leafeth the land for life, and entreth into religion, and is professed eyet his heir shall not have a Formedon in the Discender, quia habitum religionis assumps to during the fathers life, because the father may lawfully give his lands during his life: and after the death of the father, he may bring the common Writ of Formedon, if he will, or that special Writ, quia habitum religionis assumps that his election, as it seemeth.

B. And if Tenant in tail goeth upon pilgrimage, and dieth in his journey, his heir shall have a Formedon against a stranger who entreth and abateth: and the form of the

Writ shall be:

Et quod post morte præd. D, et postquam E, filet hær. præd. D iter percerinationis arribuit versus S. Jacobum, in quo itinere

obiit, ut dicit, pref.Bfil. bar. oc.

And if Tenant in tail hath iffue two daughters, and one of them hath iffue a Son, and dieth, and afterwards the Tenant in tail dieth, and a ftranger abateth; now the daughter and the Son of the other daughter shall have a Formedon in this form:

Quod reddat B& C unum mesuagium quod D,&c. et qd.post mortem præd. E& F unius filiarum ejusdem E, pres. B alter siliarum n-ra:409

filiarum predict E & B, filio predict. E & consanguin. &

bæred.prædict. E defcendere debet, oc.

And if Tenant in tail hath iffue two Sons, and dieth, and D the eldest Son entreth, and hath iffue and dieth, and his iffue entreth and dieth without iffue of his body, then the youngest Son the Tenant in tail shall have such Writ of Formedon, if he be deforced of the land.

Et quod post mortem prædict.D, & E fil.et hær. ejusdem D, et F fil.& hær. ejusdem E, præsat.B fil.præd.D, et consanguineo &

bæredi prædict. F descendere debet.

And if a man give lands in tail unto a woman and the E heirs males of her body, and of R her late hufband begotten; if the woman die, and a ftranger doth abate, her heir male begotten by R her hufband, shall have a Formedo in this manner.

Quod C dedit D quæ fuit uxor R, & hæredibus masculis de corpore ipsius D et præsat. R quondam viri sui exeuntibus, & quod post mortem præd. D, præs. W sil. & hæred. ejusdem D de corpore suo et corpore præd. R procreat.descendere debet,&c.

And if a man give lands to R, and unto the heirs which F the faid R shall beget on his first wife, then the form of the

Writ of Formedon is such:

Quod W dedit R, et hæred quos idem R de prima uxore sua procrearet; & quod post mortem prædict. R & A fil. G, quam primo duxit in uxorem præsi. I filio & hæredi ejusdem R de præss,

A prima uxore sua procreato descendere debet, &c.

And if a man give landsunto a woman and unto the heirs which he himself shall beget on the body of the said woman, and after they have time between them two daughters, and one of them hath lifue a daughter and dieth, and after the Donor and the Donoe dieth, the Aunt and the Neece shall joyn in a Formedon for that land, if they be desorted thereof, and the Writ shall be such:

Quod R dedit M, et hæred. quos idem R de corpor. ipsius M precrearet, et quod post mortem prædict. M & A unius siliarum ejusd. M de corpore suo per præs. R procreatet præs. I alteri siliar. ejusd. M de corpore suo per præs. R procreatet I de Ssilio præd. A, et consanguineo et hæred. ejusd. M descendere debet. &c.

And if lands be given to a man and his wife, and to the meirs of their two bodies, and they have iffue a Son and die, and the fon is feited, and hath iffue three daughters, which have iffue and die in the life of their father, and after one of the daughters have iffue and claimeth in the life of the grandfather, and afterwards the father and the three daughters die, the Coparcenors of the three daughters shall have a Formedon in fuch form:

Et quod post morte prædict. E, et F et W fil. & hæred. earund. E & F, & A,M & K filiarum predict.W, & Saræ fil.predict. M prafat. A filie pradia. A, et Johan. fil. pradict. K et W alter. filio prad. S consanguineis & haved. predict. Wilhelmi descendere debet, &c.

And if lands be given to R and I and to the heirs of the body of R begotten, and R hath iffue four daughters, and he and one of his daughters enter into Religion, and are professed, and I dieth, and afterwards one of the daughters of R dieth before they have any possession of the lands, and the other two daughters do survive, and are deforced of the

land, they shall have a Formedon in such form:

Quod T dedit R & I, et bæred.de corpore ipfius R exeunt. & quod post mortem pradici.I, & postquam pradici. R & Gracia una filiarum predict. R habitum religionis affumpfer. & in que habitu professi sunt, ut dicitur; Ac etiam post mortem E, alterius filiarum pradict. R prafat. M & A, aliis duabus filiabus ejufdem R poft mortem E, alterius filiarum pred.R præfat.M et A

descendere debet &c.

And if the reversion of Tenant in Dower be granted to a man in Tail, and after the death of Tenant in Dower he is feifed of the land by force of the gift, and hath iffue and dieth, and the iffue entreth and hath a daughter and dieth, and afterwards a stranger entreth and abateth in the land. the heir of the issue in tail shall have a Formedon in this form:

Quod I de Htenet in dotem de hæred. I de S, & quod idem I concessit W de S, & hared. de corpore suo exeuntibus post morte prad. I habend. & quod post mortem pradict. I & W, et R filii & hared.ejufdem W prafat.Ifabella filia et hared. predict. W descendere debet.

And if a man leafe lands for life, and afterwards grants the reversion in tail, and then Tenant for life dieth: Now if a stranger abate in the land, the grantee in the reversion

shall have such Writ:

Quod I dedit P ad vitam suam , et quod eadem I postmodum concessit præfat. F, et hæred. de corpore suo exeunt. post mortem ipfius P habend. & quod post mortem predict. P præf. F remanere

debet per formam donationis & conceff. præd.

And if a man lease lands for term of life, and afterwards grants the reversion in tail, by fine unto a man and his wife, and unto the heirs which he shall beget on the body of his wife, and afterwards the Tenant for life dieth, and the hufband and wife enter and are seised by force of the tail, and die, and a stranger abateth and entreth into the land; the heir shall have a Formedon thus:

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# 476 Another Writ of Formedon in the Discender.

Quod A dedit B ad vitam ipfins B, & quod idem A per finem inde in Curia Domini E quondam Regis Angliz avi nofiri, coram C & fociis suis tune Justic. &c. per breve suum levat. concessit D & Euxori ejus habend. post mortem ejusdem Beifdem D & E, et hæred quos idem D de corpore ipfius E procrearet, & quod poft mortem prædict. B, D et E præfat. F filio et hæred. præd. D et E de corpore ipfius E per præf. D procreato, difsendere debet per formam donationis de finis pradift.ut dicit, &c.

#### Another Writ of Formedon in the Discender.

THere is another Writ of Formedon in the Discender, & which is called a Writ of Formedon of Land, which he holdeth in Coparcenery, and that Writ lieth properly, where Tenant in Tail dieth feised, and hath iffue many daughters, and they enter, and make a division and partition of the land betwixt them, and one of the Coparcenors after the partition doth alien her part and dieth, her heir shall have that manner of Writ of Formedon; and that Writ lieth for lands given in frankmarriage, as well as for other Lands given in tail.

And if Lands in Gavelkind be entailed and descend to many brethren, as heirs to their Father, and they make partition betwixt them of the lands, and afterwards one alieneth his part and dieth, his heir shall have a Formedon of that which they held in parts, and the form of the Writ

is fuch:

Rex, &c. Pracipe A quod, &c. reddat B quatuor viginti acr. terr. cum pertin.in D, quas una cum aliis quatuor viginti acr.terr.cum pertin. in eadem vill. L dedit T in liber. maritag. cum I filia prædicta L, et quam post mortem prædict. T, I et M filet unius hared. eorundem T et I qua illas tenuit in purpartem suam, ipsam de prædict. cent. et sexaginta acris terræ per partition. inter ipfam M et R fororem, ejufdem M filiam et alter bered.pr.edict.T et I inde fact. contingent.præfat.filio et bæred. pradict. M descendere debet &c.

And if two Coparcenors be Tenants in tail by discent C from their father or mother, and afterwards they make partition, and one Coparcenor hath issue and dieth, and the other Coparcenor dieth without iffue, the heir of that Coparcenor who hath iffue shall have a Formedon in this

Et quod post mortem prædict. T,et I,et K filiæ et unius hæred. corundem T et I que illas tenuit in purpartem suam, insam de prædiel' centum & fexaginta acr. terr. per partic.inter ipfam K

&M foror. einfdem K fil. et alteram hæred. præd. T et I inde fatt. contingent. & praf.M. praf.G filio prad. M et confangui-

neo et bared. praditt.K defcendere debet, &c.

And it appeareth by the Register that a man shall have a Writ of Formedon of land which he held in partition by the name of the moiety in special case, as where two Coparcenors are daughters of Tenant in tail, and they make partition betwixt them of the land, and afterwards one fifter dieth without iffue, and the other fifter alieneth the land, and hath iffue and dieth, the iffue of the Coparcenor who had iliue, shall have a Formedon of all the land in tail in this

Rex Vic', &c. Pracipe F quod, &c. reddat H 10 Mefnag. 20 acr.terr.cum pertinentiis, &c. que L dedit A & hæred. de corpore suo exeuntibus, & quam post mortem præd. A et M. fil. & unius hæred. ejufdem A que medietat. præd. mefuag. & terr. tenuit in purpartem fuam, & Bfil. et alterius hared. pradiet.A quam alteram mediet atem corundem Mesuagior. et terr. tenuit in purpartem fuam, per partition. inde inter ipfas factam, que quidem B dict. medietatem praf. M, contingent. post mortem ejusdem M, ut soror et hæres ejusdem M tenuit, præf. H filio & baredi prad. B descendere debet. And the Writ is good, because by the death of one fifter without issue, the partition is made void, and the other shall have the whole land as heir in tail.

D And if a man give lands in tail unto I his daughter, and to the heirs of her body, and I hath iffue two daughters and dieth, and they enter and make partition between them, and afterwards one of the daughters hath iffue two daugh- [215] ters, and one of the two daughters hath iffue four daughters and die, and afterwards the Aunt who was one of the daughters of the Donee dieth without iffue, &c. and a ftranger abateth; the four daughters, and the iffue of the

other fifter shall have a Formedon in such form:

Quod reddattria Mesuagia, centum acriterra, & viginti acri prati, & cent. folid. redditus , cum pertin. in N , que una cum Manerio de B cum pertinentiis, A dedit I filio suo & haredibus de corpore ipsius I exeunt., & quæ post mortem prædict. I & Cfil. unius hared. ejufdem I qua illam tenuit in purpartem fuam, ipfam post mortem predict. I de predict Maner. Mesuag. terra, prato, & redditu per partitionem inter ipfam C. D filiam et alteram hæredem ejufdem I inde fact.contingent.et præd.D, et A,et Efil.pradict.D prafat. Margaret, Margery, Katherine, et Constantine, filiabus predia. A et T filii predict. E, & confanguineo et haredi prad.C descendere debent, &c. And

And if the moiety of any land be given to the husband A and wise, and unto the heirs of their two bodies begotten, and they have issue four daughters, and die, and the sisters enter and make partition betwixt them, and afterwards the two sisters die without issue, and the third sister alieneth, and dieth without issue; the sour sisters shall have a Formedon in this form:

Et que post mortem prædicior. Rogeri & Agnetis, et Alic. E filiæ junioris, et unius bæredis, torundem Rogeri et Agnet. que idem in Alicia jun. dictam quartam partem tenuit in purpartem suam, ipsam de prædicis medietat. per partitionem inter ipsam et Isabel. et Aliciam seniorem, et præsimatildam silias et tres alteras bæred. predicit. Rogeri et Agnetis uroris ejus inde factam contingent et predictarum ssabellæsis. Rogeri et Aliciæ senioris, præsimatildæ sorori et bæredi ejusdem Aliciæ junior. descendre dibent. &c.

And to make a full declaration of the Case of Formedon in the Discender, upon which the Writ is sounded, it is necessary to have the Pedigree made in the Writ, which you shall see here following.

> Henry Ruffel. Elizabeth his wife.

Henry Ruffel.

Joan. John. Gifford.	Maud married to F.		Margaret Will-Harper	
Roger.  Henry Gifford.	Joan. John. Botre.	Thomasin. James. Penros.	Margery. Thomas. Cole.	Ifabel. Thomas. Trevethen. Ralph Trevethen.

Henry Russel gave land to Henry Russel and to Elizabeth his wife, to Henry their Son, and to the heirs of the faid Henry the Son of his body, lawfully begotten, and died, and after Henry Russel the father and mother died, and Henry Russel.

the

the Son was seised by force of the tail, and had iffue Joan, John and Alice, and Alice had iffue Joan, Maud and Margaret, and Joan was married to John Gifford, and had iffue Roger Gifford, who had iffue Henry Gifford, and Maud was married to F. and had iffue, Joan married to John Botreaux, Thomasin married to James Penros, Margaret married to Thomas Cole, and Ifabel married to Trevethen, and Ifabel had isfue Ralph Trevethen, and Margaret was married to william Harper; and Henry Ruffel the Son died, and John his brother entred and was seised by force of the tail and died, and a stranger abated, and all the heirs in tail are dead, but Margaret Harper the wife of william Harper , Henry Gifford, Thomasin married to James Penros, Joan Botreux married to Job. Botreux, and Margery Cole married to Th. Cole, Joan Margaret and Ralph Son of the faid Ifabel; now these Coparcenors shall joyn in the Formedon, and the Writ shall be fuch:

Rex Vic. &c. Pracipe Reginaldo Rees quod, &c. redd. Will. Harper & Margaret. uxori ejus, Henrico Gifford. Jacobo Penros & Thom. uxor. ejus, Johanni Botreux & Johann. uxor ejus, Thom. Cole et Marger. uxori ejus, et Radulpho Trevethen, manerium de R cum pertin. quod Henr. Russel dedit Henrico de Russel et E uxori ejus, et Henrico [216] filio corundem Henr. de Russel. et E et hæred. de corpore ipsius Henr. filii Henr. exeunt. et quod post mortem prædict. Henr. de Ruffel, et E et Henr. filii Henr. et Johan. filii et hared. ejusdem Henr. filii Henr. et Johan. fratris et bæred. ejusdem Johan. filii Henr. et Alic. sororis ejusdem Johan. fratris Johannis, et Johannæ unius, et Matildæ alterius fil. ejusdem Alicia, et Rogeri filii pradict. Johanna filia Alicia, et Johannæ unius filiarum predict. Matild. præfat. Margaret. uxor. Wilhelmi tertiæ filiarum predict. Aliciæ, Henrico Gifford fil. predict. Rogeri et Thomasinæ, Johan. uxori Johan. Margeriæ uxori Thom. cæteris, filiabus predict. Matild. et Radulpho filio predict. Isabellæ fil. Matild. et con-Sanguineo et hæred.predict. Johannis fratris Johannis descendere debet, Oc.

# Another Writ of Formedon in the Descender,

There is another manner of Writ of Formedon in the A Descender, which is called Formedon qui insimul tenuit; and that Writ lieth by one Coparcenor, or by one heir in Gavelkind of lands entailed, where they hold the lands entailed in Coparcenery without any partition made between them of the same, and afterwards one Coparcenor doth alien her part unto a stranger in see, and dieth without issue, or hath issue and dieth; or if he dieth seised, and hath issue, and a stranger doth ous the issue, or the other Coparcenor doth put out the issue, the issue, or he who is heir to the Tail of those Lands, shall have that Writ of Formedon against the stranger, or the other Coparcenor, who desorced her of the Land.

Rex Vic. &c. Præcije Abbati Westmon. &c. quod reddat B & I uxori ejus duas partes triginta solidat. redditus, mille alborum panum pretii 20 solid. & quinque lagenarum cervic. pretii decem denariorum cum pertin. in B, quas una cum tertia parte earundem solidat. redditus, panis & cervic. cum pertin. in eadem villa, A dedit G & B uxori ejus, & harred. de corporibus ipsorum G & B exeuntibus, & quæ post mortem prædist. G, & B, & R filii & hæred. eorundem G, & B, & T siliæ & hæred. ejusdem R et W silii et hæredis ejusdem T et M stiii et unius hæred. ejusdem W qui illas duas partes, et dist. partem cum K silia et altera hæredum predist. W insimul tennit, et D siliæ et hæred.ejusdem M, et predist. W insimul tennit, et filiæ sjusdem K præset. I siliæ præsist. F, et consanguineæ et hæred. præsist. D descendere debent per formam donac præsist. &c.

And by that Writ it seems, That I is seised of the third B part of those Rents; and bringeth his Writ of two parts of that Rent.

And there is another Writ of Formedon and Infimal tenuit, where he shall make his demand by the name of the moiety and that is where one Coparcenor is deforced of her part, and the other Coparcenor is in possession of her part, and the Writ is such:

Præcipe Abbati Westmon. quod,&c. redd. B & I uxori ejus medietat. triginta solidat. redditus, et reddit. mille albor. panum, pretii decem solid. et quinque lagenarum cervicia, pretii decem denariorum,&c. cum pertin. in villa Westm. quam una cum alia medietate eorundem triginta solidat. redditus, & redditus panis & cervisia cum pertin. in eadem villa, A dedit G et Buxori ejus, et hared de corporibus eorundem G et Bexeuntibus, et quam post mortem præd. G, & B, & F silii et hared eorundem G, et B, et T sil. et hared ejusdem F, et W silii et hared ejusdem T, & R silii et unius hared ejusdem W, quam illam & præd. aliam medietat cum M silia et altera hared præd. W, insimul tenuit & E silii ejusdem R, præsat. I sil. prædist. E, & consanguineo et hared prædist. R descendere de bet, %c.

And it appeareth by that Writ, that one Coparcenor shall have the Writ of Formedon in the Institute against a stranger upon the possession of his Ancestor, without naming the other Coparcenor who hath her part in possession.

And if a man do bring a Formedon in the Descender upon the seisin of his brother, and as heir to his brother; he shall not mention in the Writ, that his brother is dead without issue if a man bring a Formedon in the Descender as cousin and heir to him, he ought to mention in the Writ how he is cousin and heir to him, and he ought to make himself heir unto him who was last seised, and that by the same Writ.

And a man shall have a Formedon in the Descender upon a gift in tail made before the Statute of Donis, if the alicnation be made after the Statute, and not before.

And if lands in tail descend to two Coparcenors, and one entreth into the whole, and the other hath issue and dieth, and she which entreth into the whole dieth without issue, the issue of the other Coparcenor shall have several Writs of Formedon, one of the seisin of the grandsather, and in that Writ he shall not say Insimultenuit, &c. because her mother was never seised but of the other moiety of the land of the seisin of her Aunt, the Writ shall say, Qui insimultenuit with her mother, for that seisin was a seisin to her mother, if she would, &c. And if one Coparcenor after the

death of the Ancestor enter into the whole, and alieneth in fee, and dieth without issue, the other Coparcenor shall demand the moiety as heir unto her father, and the other moiety as heir unto her father.

A Andif the heirs in tail of Gavel-kind, bring a Formedon in the Descender, the Writ shall be of common form, as the Writ of Formedon brought by sisters, and in the Count he shall shew the custome.

B A Formedon shall be brought of a Gors. but not of an Advowson.

And if Tenant in tail be indebted to the King in the Ex-

chequer, and dieth; and his heir entreth into the Lands, and is diffrained in the entail Lands for the Kings debt; Now if the fathers Executors have Affets, or Goods, or if the father hath Lands in Feefimple in the hands of others, which he hath aliened; the heir in tail shall have a special Writ unto the Treasurer and Barons of the Exchequer, rehearsing the whole matter; commanding them that they do enquire thereof; and if it be true, that they do survey is the property of the state of the sta

Rex Thefaurio & Baron. suis de Scaccario falutem. Monstravit nobis R filius I de W, quod licet ipfe non tenet terras feu tenement. quæ fuer predict. I prout 12 mefuag. & 2 carucat. terr. in I cum pertin. quod prad. I & Cuxor. ejus mat. pradict. R quorum hæres ipfe elt, tenuer. fibi & hæred. de corporibus ipforum I & C, exeuntibus ex dono & concessione H de C per finem inde in ur.Domini E, &c. avi noftri levatum, & que post mortem predict. I & C ad manus ipfius R virtute finis predict. devener. vos nihilemin. ipsum R in terras & tenement. predict. quod sie tenent. in feed. talliato, pro centum libris nobis pro arerag. extent.manerii de Offord. prafat. I per vos postquam gubernacula regni susceperimus, et ten. præd. dictis I & Cin feod. talliato sic data et conceff. fuer. commiff. reddend. omiff.tam pradict. hered. predict. I quam tenent. terrar. et tenement. qua fuer. ipfius I in feodo simplici, qui de debitis suis de jure debent onerari & sufficient. habeant, unde debita illa levari poffint, distringitis, & ipsum ea occasione inquietatis multipliciter et gravatis minus juste, orc. super quo nobis supplicavit sibi per nos remedium adbiberi; Nos nolentes præfat. R in hac parte injuriari, vobis mandamus, quod si vobis modo legitime constare poterit mes. & terras præd. prædictis I & Cin forma præd.data et conceff. fuiffe, ipsumque R aliqua alia terras et tenementa qua fuerunt prad. I, præter eadem mef. et terram, quæ ad manus suas virtute finis devenerunt, non tener. ac diltum haredem feu tenent. prad. fufficient. habere, unde dicta debita levari poffint, ficut prad. est tune prad. R de præd. centum libris erga nos exonerari, & quietum effe faciat, illos qui inde de jure onerari debent, prout justum fuerit, onerantes, Teste, &c.

And by that Writ it appeareth that if the heir, or the other Ter tenants were not sufficient for to pay the debt, the lands which the heir hath in tail shall be charged; for some say that the King is not bound by the Statute of Bonis, So. but that he is in the same case he was before; Quare

thereof.

And if a man do alien his lands in fee, and afterwards become indebted to the King, &c. If the alience be diffrained for that debt, he shall have a special Writ to the Treafurer and Barons of the Exchequer, rehearing the whole matter, commanding them for to surcease. &c.

And fo if a man be diffrained for a debt or duty due to the King, as executor, or as a pledge for him who is the Kings debtor, he shall have a special Writ unto the Treafurer and Barons of the Exchequer, to enquire thereof, and

to do right.

#### Writ of Formedon in the Remainder.

The Writ of Formedon in the Remainder lieth, where a man giveth lands to one in Tail, the Remainder unto another in Tail, and afterwards the first Tenant in Tail dieth without issue of his body, and a stranger doth abate and deforceth him in the remainder; he in the Remainder or his heir, shall have that Writ of Formedon in Remainder. H And so if the first Tenant in tail alieneth in Fee, and dieth without issue of his body begotten, he in the Remainder in Fee, shall have a Writ of Formedon in the Remainder to recover his Estage, &c.

And if aman giveth lands for term of life, the Remainder to another, and the heirs of his body begotten, and the Tenant for life dieth, and a ftranger abateth and deforceth him in the Remainder that he cannot enter, he in the Remainder, or his heir shall have a Formedon in Remainder to

recover his Estate. &c.

So if a man make a Gift in Tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for life, and dieth without iffue, he in the Remainder in Fee or his heir shall have a Writ of Formedon in Re-

mainder to recover that Land.

And it feemeth the same Law shall be, if a man lease lands for term of life, the Remainder to another in Fee, and the Tenant for life doth alien in Fee, or in Tail, or for life and dieth, and a stranger abateth and deforceth him who ought for to have the Remainder: then he in the Remainder, or his heir, shall have a Formedon in the Remainder to recover that land: Quod vid.24 E.3.

And that appeareth to be but reasonable, because he hath Right for to have the land; and then it is but reason that he have an Action for to recover the same; And that appeareth by the Statute of west. 2. cap. 24. which willeth,

Nn 2 Ques

[218] Quod quotiescung, de catero evenerit in Cancell. quod in uno cafu reperit. breve, in consimili casu cadente sub eodem jure, & fimili remedio indigente; concordent Clerici in Canc. in brevi faciend. for which it seemeth that such Writs are granted.

And also upon the Statute of Donis conditionalibus, there A is not the Writ of Formedon given by express words, but a Writ of Formedon in the Descender; but yet it was never doubted, but that if a man make a Lease for Life, the Remainder in tail to another, that he in the remainder in Tail, or his heir should have a Writ of Formedon in the Remainder, after the death of the Tenant for life, if he were deforced of the Land; and that is by Equity of the Statute of Donu as it feems; For no Formedon in the Remainder is given by any Statute; and therefore it feems is shall be taken by Equity of the Statute; yet some have doubted thereof; and the form of the Writ for him who claimeth the Remainder in Feefimple, after the Estate tail determined, is fuch:

Rex Vic. &c. Præcipe A quod, &c. reddat B unum mesuag. B XX acr.terr. &c. que C dedit D. & her. de corpore suo exeuntibus it a quod fi idem D fine ber. de corpore suo exeunt. obierit, pred. mesuag. & xx acr. terr. cum pertinen. pref. B, & beredibus suis remanerent. Et quod poft mort.prædict. D prefat.B, remanere debent per formam donationis predict. eo quod prad. D obiit fine hærede de corpore suo exeunte, ut dicit, & nifi, &c.

tunc fum.

And for the heir of him upon whom the Remainder was entailed: Thus,

Et que post mort. pred. D & B, pref. I filio & hær. pred. B remanere debet per form. Oc. eo quod pred. D obiit fine bær. de

corpore sue exeunte, ut dicit, & nisi, &c. And if a Lease be made for term of life, the Remainder C unto another, and unto the heirs of his body begotten; Now after the death of Tenant for life, if he in the Remainder be deforced of the Land, by abatement of a stran-

ger; Then he shall have such Writ:

Quod A dedit B ad vitam ipsius B, ita quod post mortem ejusdem B pred. meff. & XX acr.terr.cum pertin. D. & hered. de corpore suo excuntibus remanerent, & quod post mortem predict. B & D pref. W, filio & heredi ejufdem D remanere debent per formam; 5.c.

And if a Reversion be granted to another in Tail, and D the Tenant for life dieth feised, and a stranger abates and enters the Land; the Grantee in Reversion shall have a

Formedon in fuch form:

2 & 3 Ma. Dyer 125. 6 E 3.5.

Qua

Que G dedit T ad vitam ipsius T, & que idem G postmodum concessit presat. M&P quondam viro suo, habend. post mortem pred. T presat.P & M, & hered. de corpor. ipsor. P & M exeuntibus, & que post mortem pred. T pres. M remanere

debent per form. concessionis pred. ut dic. &c.

And if A give a Mannor except 13 s. 4 d. rent to R and I his wife, and to the heirs of their two bodies begotten, and the Remainder to one I in Fee, and afterwards R aliens one house and one acre of Land to one man, and three acres to another, and two acres of Land to a third person, and the residue of the Mannor unto one B in Fee, except the rent of 13 s. 4 d and afterwards the husband and wise die without thus betwixt them; he in the Remainder shall have

fuch Writ against the Alience.

Pracipe D quod, &c. reddat. I manerium de F, cum pertia. exceptis uno misse sex acr. terr. & trescate clidat. & quatuor denar. redditus in eodem manerio. & pracipe G quod, &c. redat eidem I unum mesuag, & xx acr. terr.cum pertin. in F. Et pracipe T quod, &c. reddat eidem I tres acr. terr. &c. Et pracipe K quod, &c. reddat eidem I duas acr. terr. cum pertin. quod A dedit R & I uxori ejus, & hered. de corporibus ipsorum R & I exeunts, ita quod si iidem R & I sine her. de corpor. &c. obierint, pradict.mess. sex acr. terr. & maner. except. mess. sex acr. terr. & redditu pred. pres. I & heredibus suis remanerent. &c.

And by that it appeareth, That a man shall have a Writ of Formedon in Remainder against several Tenants by di-

vers Precipes in one Writ.

And if a man lease Lands for life, the remainder in tail, &c. the remainder over in fee to another, and the Tenant for life dieth, and the Tenant in Tail alieneth in fee, and afterwards the Alienee doth alien two parts of the land to one Tenant, and the third part of the Land to another Tenant, and then the Tenant for life dieth, and then the Tenant in Tail dieth without issue; He in the remainder in fee shall have a Formedon in the remainder, in such form:

Precipe A quod, &c. redd. B duas partes unius mescum pertin. in N. Prec. F quod, &c. reddat eidem B tertiam partem unius mescum pertin. in eadem villa, quas D dedit C ad vitā ipsus C,ita quod post mortem ipsus C pred. dua partes, & tertia pars F, et hered. de corpore suo exeunt. remanerent, & si pred. F sine her. de corpore suo exeunte obierit, pred dua partes & tertia pars pref. B et har. suis remanerent, & qua post mort. pd. C & F, pref. B remanere debent per sorm. donationis pd. eo quod pred. F obiit sine hered. de corpore exeunt. ut dicit. & nisi. &c.

Nn 3

[219]

And by that appeareth how that he shall have one writ

by feveral Pracipes against several Tenants.

If a man leafe to one twenty acres of lands for life, and F dieth, and the reversion descendeth to his brother, and he dieth, and the reversion descendeth to his two fisters, and they do make partition of the lands, and ten acres are as figned to one fister to have to her and her heirs, and the other ten acres are allotted to the other fister and her heirs; and one of the Coparcenors grants the reversion of her part and ten acres to a man and his wise, and the heirs of their two bodies begotten, and afterwards the Tenant for life dieth, and a stranger doth enter and abate in the land; the husband and the wise who are in the Remainder shall have a Writ of Formedon in the Remainder in this form:

Prac. R de N, quod redd. K & A uxori ejus decem acr. terr. cum pertinentiis in N, quas una cum aliis decem acr. terr. cum pertinentiis in eadem villa R de S dedit W ad totam vitam suam, & quas M de B soro & una hered. N de S, fratri & her. præd. R de S, cui quidem M reversio præd. decem acr. terr. assignata suit in purpartem suam, ipsam de prædictis viginti acris terr. per partic. inter ipsam Luciam soro. & alteram hered. prædict. N de S, inde sactam post mort. præd W contingent.concessis pressen, et her. de corporibus ipsorum R et A excunt. post mort. ejus d. W habend. & quæ post mortem ejus d. W præs. R, et A remanere debent per formam concessionis prædict, ut dicunt, & nist secevint. & prædict. & c.

And if he who hath the Remainder, or his heir be once A feised of the lands by force of the Remainder; then he shall never have a Formedon in Remainder for that land, but a Formedon in Discender, because the remainder is once executed. And no Tenant shall have a Formedon in Discender, nor in Remainder, where he is once in possession by force of the Entail, or by force of the Remainder; for after that he hath possession of the Land by force of the tail, or by force of the Remainder, if he put out, he shall have an Assiste of Novel Dissission, or the Writ of Quibus, in the nature

of an Affife,&c.

If a Remainder be given to two or three heirs, and one B dieth, and the other surviveth and afterwards dieth, his heirs shall have a Formedon in the Remainder, as heir to him, without mentioning in the Writ that he survived the other Joynt-tenant, &c.

And in a Formedon in the Remainder, he ought for to C fnew the deed thereof, if the Demandant do require Oyer

f

of the deed, but in the Count he shall not speak of any deed; but the Tenant ought for to demand Oyer thereof, and then the Demandant shall shew the same, and in the Count shall not mention the deed.

D And if the Remainder be once executed in the Writ of Formedon in the Discender, he shall never mention that Remainder, but the general Writ of Formedon shall serve in that case, as appeareth by the rule in the Register.

#### Writ of Formedon in Reverter.

The Writ of Formedon in the Reverter lieth, where one giveth lands to a man in tail, or in frankmarriage with his daughter, and afterwards the Donee or his heirs dieth without iffue of his body; then the Donor or his heirs may bring a Writ of Formedon in the reverter against him who is Tenant of the lands so given.

And fo if one man giveth lands unto another in tail, and See before the Donor granteth the Reversion in see unto another, and 218.D. then the Donee in tail dieth without heir of his body, the Dy.125. Grantee of the Reversion shall have a Writ of Formedon in 6 E.3.5. the reverter to recover that land: but if he grant the reversion unto another in tail, and then the Donee dieth without heir of his body, then that Grantee of the reversion shall have a special Writ, as appeareth before, amongst the Writs of Formedon in the remainder, and for the heir of the Donor, the form of the Writ is such:

Præcipe A,&c. quod redd. unum mes. 19 viginti acr.terr.cum Vide 4 Eliz. pertin.in G, quod C pater prad. B cujus hæres ipse est, dedin I Dy. 216. A & E uxori ejus & hær. de eor. corporibus exeunt. & quod post 22 H.6.36. mort. præd. I & E ad præs. B reverti debet per form. donationis præd. I & E obierunt sine hær. de corporibus suis exeunt. ut dicit, & niss. &c.

And if lands be given in tail, the remainder to another. Fin tail, and afterwards the first Tenant in tail dieth without issue, and the second Tenant in tail in the remainder doth enter into Religion, and is professed; The Donor or his heirs shall have such a Writ of Formedon in the reverter:

Quod C pat. D cujus heripst est, dedit F & hæredibus de corpore suo exeunt. ita quod si idem F sine her. de corpor. suo exeunt. obierit, prædist. mes. &c. H, &c. her. de corpore suo exeunt. remaner. &c quod post mortempræd. F, & postquam præd. H habit. religion. assumpts ad præs. D reverti debet per sorm. donation. præd. eo quod præd. F obiit sine hær. de corpore suo exeunte. &c. &c. nis. &c.

Nn 4

And if C give lands in tail to E and to F his wife, and G unto the heirs of their two bodies begotten, and the faid C hath iffue G and B and dieth, and afterwards G dieth, and B granteth the reversion to H for life, and afterwards E dieth and F dieth without iffue of their bodies, &cc. B shall have a Formedon in the reverter in this form:

Quod C dedit E & Fuxori ejus, & hæred. de corporibus, & g.c. exentibus, & quod G silius et hæres prædict. C, frat. præd. B cujus hæres ipse est, post mortem præd. E concessit H, ad totam vitam suam post mortem præd. F habend. & quod post mortem prædictor. F & H, ad præsat. B reverti diset per somam donationis et concess. præd. eo quod prædict. E & F, objer sine hæred.

de corporibus suis ereuntibus, &c.

And it seemeth in that case, that is H had survived F and had entred into the land, and had been seised of the Land for term of his life, and then had died, that then the said B shall not have a Formedon in the reverter, but a writ of Entrie adterminum qui preteriit. But is H have not entred into the land after the death of F, then the said B shall have the Writ of Formedon in the reverter. But is H have entred into the Land after the death of F, and had aliened the Land in see, then B ought to have had a Writ of Entrie in Consimilically during the life of H, and after the death of H a Writ of Entrie ad comminem legim.

And if F lease Lands unto P for term of life, and hath A issue a son and a daughter, and dieth, and the son granteth the reversion to Land to the heirs of his body begotten, and afterwards the Tenant for term of life dieth, and the tenant in tail dieth without issue, &c. and then the son who was donor dieth, the daughter shall have a Formedon in the

Reverter in this form:

Quod F dedit P ad totam vitam suam, & quod T silius & har.pr.ed.F frater pr.ed.B cujus har.ipse est, concessit I habend. et post mortem ipsius P, eidem 1 & hared. de corpore suo exeunt. e quod post mortem pradict. P & I, prasat. B reverti débet per form. donation. et concessionis pradict. et quod prasat. I obiit

fine her. de corpore suo exeunte, ut dicit, oc.

And if Lands be given in tail, and the Tenant in tail hath B issue two daughters, and afterwards one of the daughters hath issue a daughter B, and the other daughter hath issue another daughter C, and afterwards B hath issue I, and then all the daughters, and then the said I dieth without issue of his body, the donor or his heir shall have such Writ:

E

Et qui poft mort. prædid. E, et F, et M, et A filiar. et hær. corund E, et F, et I fil. pradict. M, et bar. corundem M et A, ad præt. I de Breverti debent, &c. eo quod prædict. I, &c. fil. prædict. M obiit fine hæred. de corpare suo exeunt.

Ina Formedon in the Reversion in his Count he ought to lay the Esplees in the Donor, and in the Donee.

In a Formedon in the reverter he ought to mention the eldest brother who survived his father,&c. because he held the estate, although that he was not seised of the land; as Jup 470 if the Donor hath iffue two daughters and dieth, and the eldest Son dieth before he entreth into the land. In a Formedon in the Reverter brought by the youngest Son, he ought to mention the eldest Son, who was his brother. because he was once heir to the donce; but if the eldest die in the life-time of the father, then the youngest Son in the Writ brought by him shall not mention him, as heir to the father, because he was never heir in facto to the father, but in a Writ of right, which is called Pracipe in capite, brought by the younger Son, as heir to his father, although the eldeft ion be dead in the life of the father, yet in his count he ought to make mention of the eldest son, because y possibility he might have held the Estate, and have been heir to his Father.

And if a man giveth lands in tail, and the tenant in tail hath iffue and dieth, and the iffue dieth without heir of his body before he entreth into the land, the Donor may bring a Formedon in the Reverter, supposing that the Donee died without iffue, &c. and that Writ was awarded good, M. 18 E.2. because the issue was not living at the time of the purchase of the Writ, and he cannot have a Formedon in the Reverter of the seisin of the issue, because the issue died

before he had any seisin of the Land.

## Writ of Ejelione Firme.

THe Writ of Ejestione firma lieth, where a man doth lease vide 1 & 2 Lands for years, &c. and afterwards the Leffor doth M.Dy.117. eject him, or a stranger doth eject him of his term, the lessor Ibgraves shall have a Writ of Ejectione firme; and the form of the Case. Writ is fuch:

Rex Vic. &c. Si A fecerit, &c. tune pone, &c. B, quod fit coram Juftic. noftris, &c. oftenfurus quare vi & armis maneriam de I, quod præf. T. A dimisit ad termin. quod nond. præteriit, intravit, & bona & catall. ejusdem A ad valenc. &c.

Ejectione.

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in eod. manerio inventa cepit & asportavit, & ipfum A à firm. Sua pradict. ejecit, & alia enormia ei intulit ad grave damnum, oc.

And the is another form of Writ thus:

Oftenf. quare vi & armis manerium de B, quod I praf. A dimisit ad termin. 7 annor. infra termin.idum intravit, & illud 6 R.2. Fitz. per magnum tempus occupavit, & ipsum A quominus exitus mafirm.acont. nerii præd. juxta form. dimij. præd. percipere potuit, impedivit,

And in that Writ he shall recover his term again, if the H term be not ended, and the Process is Attachment and Distress, and process of Utlagary. And Anno 14 H. 7. in Ejectione firme brought against a stranger, the Plaintiff had Judgment for to recover his term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and execution awarded for the Plaintiff.

And 17 H.8. fuch Judgment was given in the Common I Pleas, that he should recover his term and his damages.

If a man leafe Lands for years, and afterwards fuffer a feigned Recovery against him by a Writ of Entrie in the Post,, or other Writ, if he who recovereth entreth, the termor shall have an Ejectione firme against him by force of the Statute of 21 H.8.cap. 15. because the Statute giveth him power to retain, hold, and enjoy his term. And by that it appeareth, that he who recovereth doth wrong unto him, if he oult him of his term; but before the faid Statute, the Lessee could not have such Writ: because he who recovered came in by course of Law.

And if a man lease Lands for years, and afterwards grant- A eth the reversion in Fee, and the Lessee attorneth, now if the Grantee of the reversion do put out the Termor he shall have an Ejectione firme against him. And so if the re- B version do Escheat, and the Lord by escheat eject the Termor, he shall have an Ejectione firmæ against him.

And so if he in the reversion be a villain, and the Lord C claim the reversion, and afterwards eject the Termor, he shall have an Ejectione firme against him.

Writ

#### Writ of Aiel or Befaiel.

He Writ of Aiel or Besaiel lieth, where the Grandsather or great Grandfather was feifed in his demein as of fee

of any Lands or Tenements in Feefimple the day of his Note that in death, and dieth, and a stranger doth abate or entreth the this Writ, a same day upon him, and deforceth the heir, the heir shall man cannot have that Writ of Aiel or Refaiel, as the case is, and it be-make title hoveth not that the Grandfather die seised; or if he be his Besaiel; feifed the day that he died, it sufficeth to maintain this or the broaction; and the form of the Writ is such:

Befaiel, 3 E. 3.

Item non fitz. Aiel. 6. 40 E 3.38. It was found by Affife, that the Ancestor did not die seised, yet no estoppel to have Cosinage, for if he were seised the day in which he died, it sufficerh.

Rex Vic' &c. Pracipe A quod juste &c. redd. B unum me- In Aiel the Suag. cum pertin. in E de quo W avus præd.B, avia pred.B. vel defendant proavus, vel proavia pred.B cujus heres ipfe eft, fuit feifit. in faid, that the proavus, vel proavia prad. B cujus naves ipje eff. Just jespt. in Aiel had if-Dominico suo, ut de feodo die quo obiit, ut dic. nifi fecerit. nic u. eldeft pradict. B fecerit secur. &c. tunc sum.pradict. A, &c. fon, who furvived the

Aiel, and committed Felony, and was abjured, and afterwards taken and in Eyre adjudged a Felon; and good Plea. 6 E.3 Fitz. Aiel.

And the process in that Writ is Summons and Grand Cape before appearance; and after appearance, if the Tenant make default, a Petit Cape shall be awarded.

And although that the Ancestor go in pilgrimage beyond 13 E.3. Aiel the Sea, and there dieth, yet the Writ of Aiel shall be ge- 2.

neral, as is aforefaid.

And so if the Grandfather enter into Religion, and is 21 E.3.10. professed, the heir shall have a Writ of Aiel, if the stranger Br. Cofinage. do abate, and the Writ shall be general, and shall not speak of his entry into Religion or of his possession, &c.

And the Aunt and the Neece shall joyn in a Writ of Aiel of the seisin of their Grandfather, by equity of the Statute. And the Statute shall serve for those dying seised 6. In Befaiel, Statute. And the Statute man lerve for those dying lened the release before the Statute, as for those dying seised fince the Statute of the Aiel tute.

warranty is And two Coparcenors brought a Writ of Aiel, and by good plea. their Count they did suppose the Ancestor to be great 12 E. 3. Grandfather to the one, and Trefaiel to the other, and yet Joynder in it was adjudged good. And the Writ in the Register is such: action.

14 E.3. Co-

finage 6.

# Writ of Cofinage.

Rex Vic.&c. Prac. A quod juste,&c. redd.B & C unum motendinum,&c. de quo D avus predit.B, et proavus pred. B cujus bared,ipsi sunt, suit seisitus,&c.

## Writ of Cosinage.

The Writ of Cosinage lieth, where the Tresaiel was seised I in his demess as of see the day he died of any land or Tenements, and dieth, and a stranger doth enter and abate, then his heir shall have a Writ of Cosinage. And the form of the Writ is such:

Rex Vic. &c. Prac. A quod juste, &c. redd. B unum mes. K cum pertin.in N,de quo.W consanguineus vel consanguinea pred. B cujus heres ipse est, suit seissitus in dominico suo ut de seod. die quo obiit, ut dicit. et niss.

And a man shall have a Writ of Cosinage of the seisin of L the brother of the Tresaiel.

And the heir of the Lord who was his Trefaiel may have M agos it is ada Writ of Cofinage of the rent of the Seigniory against the mitted that Tenant, if he deforce him of the rent, and may count of the Trefaiel is seifin of his Trefaiel; or if he will, he may have a Writ of cousin.

customers and services against the Tenant at his election.

And if a man may have a Writ of Aiel, he shall not bring N a Writ of Cosmage, and if he do, the Tenant may abate the Writ by pleading the seisin of the great Grandsather; and also a man shall not have a Writ of Cosmage of the seisin of his great Grandsather, but shall be put to his Writ of Besaiel, &c.

Nor a man shall not have a Writ of Cosinage of the death of his uncle, because he may have an affise of Mort-danneestor of his seisin.

And Cosinage doth not lie between privies in blood, no 0 more than an assise of Mortdauncestor, but shall be put to their Nuper obiit.

And if a Tresaiel goeth beyond sea and entreth into reli-P gion, and be professed; yet the Writ of Cosinage shall be general as the Writ of Aiel shall be. And the Process is Summons, Grand Cape, and Petit Cape,

Writ

## Writ of Ad quod Damnum.

He Writ of Ad quod Damnum lieth, where a man will give Lands or Tenements in Mortmain, as to a Religious house, or to a body politick in Feelimple, then he ought for to have the Kings License, and the License of the chief Lords to make such gift or grant, and before such License be granted, the course is to fue unto the King to have & License to fue that Writ out of the Chancery, directed unto the Escheator, to enquire what damage it would be to the King, or unto other persons, if the King do grant such License: and upon the Return of that Writ certified in the Chancery, the King ought to give leave, that he may alien or give in Mortmain; and that inquifition ought to be certified into the Chancery under the feals of the Escheator and of the Jurors by whom the Inquifition was found. And the form of the Writ is such ;

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Rex dilecto fibi I de K Escheatori suo in com. L salutem. Pracipimus tibi, quod per sacramentum proborum & legalium hominum de Balliva tua vel de comitat. tuo, per quos rei veritas melius sciri poterit, diligenter inquiras, si sit ad damnum vel ad prejudicium nostrum vel aliorum, si concedamus B, quod ipse unum mesuagium, duas acras terra, counam acr. prati cum pertin. in W, dare possit & assignare cuid. Capellano divina pro anima ipfius B, & animab. patris & matris, ac anteceff. suorum, & omnium fidelium defunctorum in Capella Beate Maria de W, vel in Ecclefia Parochiali beata Maria de S, fingulis diebus celebraturo Habend. & tenend. eidem Capellano & fuecessoribus suis Capellanis divina in Eccles. predict. vel in ead. Capella pro animabus præd. singulis diebus, prout prædictum eft, celebraturo in perpetuum, necne, & fi fit ad damnum vel prejudicium nostrum, aut aliorum, tunc ad quod damnum & quod prejudicium nostrum, & ad quod damnum & quod prejudicium aliorum. Et quorum, & qualiter , & quomodo , & de quo, vel de quibus præd. mef. terra & pratum tenean. & per quod servicium, et qualiter et quomodo, et quantum valent per annum in omnibus exitibus, juxta verum valorem eorundem, et qui et quot funt medii inter nos et præf. B de Mef. terra et prato prædict. et que terra et que tenementa eidem B ultra donationem et affignationem prædict.remaneant, et ubi, et de quo, vel de quibus, teneantur, et per quod servitium, et qualiter, et quomodo, et quantum valeant per annum in omnibus exitibus, et si terra et tenementa eidem Bremaneant. ultra donationem et afsignationem præd. sufficient.ad consuctud.et servitia tam de præd. meluae. mesuag. terra, & prato sic datis; quam de aliis terris & tenem, sibiretentis, debita faciend. & omnia alia & singula onera qua suftinuit, & sufiinere consuevit, ut in seitis, visibus franci pleg. auxiliis, tallagiis, vigiliis, sinibus, redemptionibus, araci pleg. auxiliis, tallagiis, vigiliis, sinibus, vedemptionibus emercamentis, contributionibus, & aliis quibuscunque oneribus emergentibus suftinend. Et quod idem B. in assis, prout ante donationem & assignationem prædict. poni possit, ita quod patria per donationem & assignationem prædict. poni possit, ita quod patria per donationem & assignationem prædict. poni possit, ita quod patria per donationem & assignationem prædict. poni possit, ita quod patria per donationem & assignationem prædict. poni possit, ita quod servis, solito non oneretur su gravetur, & inquisitionem inde distincte & aperte fastam nobis in Cancell nostra sub sigillituo & sigillis eeram, per quos fast. surit sine dilatione mictatis, & hoc brevs, Teste, &c.

Or thus, Quodharedes ipfius B. in aff-juratis. & aliss recogmitionibus quibuscunque poni possint, prout antecessors sui ante donationem & assignationem præd. poni consurver ita quod patria

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By which it appeareth, that it is damage to the Country, that a Freeholder who hath sufficient Lands to pass upon affise and Juries, should alien his Lands in mortmain, by which alienation his heirs should not have sufficient Lands after the death of the father, to be sworn in Affises and Iuries.

And by the Rule of the Register, If a Chaplain or a woman will give their Lands or Tenements in mortmain; yet in the Writ of Ad quod damnum, shall be that clause, Et quod iidem &cc. in assists, jwatis, & aliis recognition, quibuscuraue poni possint; By which it appeareth, they ought to have sufficient Lands, besides the Lands to descend to their heirs.

And if a Chaplain and a Layman will alien in a Mort C main joyntly by License, then the Writ of Ad quod damnū

shall be in this form:

Et quod idem A & B, & hæred.predist. B capellani, in affifis, juratis, &c. poni possint, prout idem A & antecessor. ipsius B Capellani ante donationem, &c. poni consucuer. ita qd. patria, &c. in ipsius A & hæred. prædist. B desect. magis solito non

n eretur, &c.

And if one Abbot will give Lands or tenements in Mort-D main, to another Abbot or Prior, or body corporate, yet he ought to have the Kings License so to do, because of the words of the Statute of Mortmain. It a quod terr. Stenamenta ad manum mortuum non deveniant quoquo modo. And there he ought for to sue a Writ of Ad quod damnum to enquire as aforesaid. But in the Writ shall be this Clause, Et quod idem Abbas, Sc. in asset jurat. Sc. nor that Clause, It a quod

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quod patria, &c. shall not be put in that Writ of Ad quod damnum. But now the Common experience is, that they will not fue the Writ of Ad quod damnum when they purchase leave to alien in mortmain, but the use is, to have these words in the end of the Kings Patent of License; Et hoc, absque aliquobrevi de Ad quod damnum, seu aliquibus aliis brevibus, inquisitionibus, aut mandatis nostris superinde habend. & prosequend. But it seemeth those Patents are dubious, whether they be good or no; if it be evidently proved, that such patents are unto the damage of others who are the Kings Tenants, and by which the Kings tenants ought to have ward hips or eschears; &c. and by which the King loseth the wardship of his Tenants, or that the King loseth any advantage which he might have, if such patents were not granted. And therefore I conceive, that the best course is, to lue forth such Writs of Ad quod damnum, to enquire to what damage fuch Licenses in mortmain shall be to the King or others, so that the King be not deceived in his grant. And fee a good cause for the same in the title Grants in the abridgment, H.16.E.3.

And there is another Writ of Ad quod damnum, if it be to the damage, &c. If the King grant to B. that he may give five houses. &c. to C. guardian of the Chappel of our Lady S. Mary, and to his Successors Guardians and Chaplains of the foresaid Chappel, for the maintainance of the said Guardian, and two Chaplains to do divine services in the said Chappel and in the Church of P. &c. in the honour, &c. and for the souls, &c.

And if the King will give license to one to grant a rent unto an Abbot and his Successors, yet he ought for to sue forth a Writ of Ad quod damnum, if he have not these words in the patent; and this without any writ of Ad quod damnum, &c. And the form of the writ is such:

Si concedamus eid. A. quodipse cent. marc. redditus cum pertin.in N. dare possit. & assignare dilestis nobis in Christo Abbati & Conventui de N.ac Priori & Monachis in Prioratu S. Jacobi Bristoll. que est cella ejusa. Abbatis commorantibus, ad inveniend. duos Capellanos &c. in Eccles prioratus præditenend. eissem Abati & Conventui ac Prioratui & Monachis in dicto Prioratu commorantib. & successorib, suis, ad inveniend. duos Capellanos, &c. in Eccl. Prioratus prædicti, ut prædiessis gulis diebus celebratur in perpetuum neene. Et si sit ad dampum &c. ad quod damnum &c. & de quo, vel de quibus prædiredditus teneatur. & per quod servic. & qualiter, & quomodo, & qui, & quot sunt medii, ut in primo brevi.

And

And it is not faid in the Writ, what the value is yearly,

because rent ought not to be extended.

And if a man fue to the King for a license to give ah Ad. C vowson to two Chaplains, and to their successors to hold to their proper use, and that they may hold the same to them and their successors, appropriate for ever to say divine service, &c. he shall have a Writ of Ad quod dannum, to enquire, what damage such grant would be to the King or others, and that Writappeareth in the Register. And in the Writ of Ad quod D dannum the substance of the License, to alien in mortmain, ought to be expressed.

And if a man will exchange Lands, Tenements, or Rents E with another Abbot, or Body corporate, upon the License granted, he ought to sue forth a Writ of Ad quod damnum; and in the Writ both the Lands which are given, and the Lands which are taken in exchange, ought to be mentioned,

and to enquire of them as afore is faid.

There is another manner of form of Ad quod damnum where the King granteth a License unto an Abbot or a Prior to purchase twenty pound land, and afterwards one man will give Lands to the said Abbot of the value of forty shillings, and another will give him Lands of the value of forty shillings, and another man lands of the value of 20 s. The form of the writ of Ad quad damnum shall be such:

Rex Escheatori,&c. Precipimus tibi, &c. si sit ad damnum,&c. si concedamus A. quod ipse unum mesuagium, &centum acras terra in N. B. de C. quod ipse unum mesuagium, & 40 acras terra cum pertin. in eadem villa. E. de F. quod ipse 30 acras terra in eadem villa dare possit, & assignare dilectis nobis in Christo,&c. habend. sibi & successoribus suis in partem satisfactionis 201. 2H. 7. 6. terrarum & redditaum per annum, quas Dominus Edwardus nuper Rex Anglia avus noster per literas suas patentes eigem ahbeti & Conventui, tam de seado sua propria quam aliente.

nuper Rex Angliæ avus noster per literas suas patentes eisdem Abbati & Conventui, tam de seodo suo proprio quam alieno, exceptis terris & tenementis quæ de ipso avo nostro tenebantur in capite concessit acquirend. & etiam I.de N. quod ipse unum mes suasium cum pertinent.in eadem villa dare possit & assignare cisdem Abbati & Conventui, babend. & tenend. shi & successoribus suis in perpetuum in excambium, pro uno mesuagio in eadem villa eidem I. de N. per præd. Abbatem & Conventum dandis & concedend. habend. & tenend. eidem I.de N. & hæredibus suis in excambium præd. scut supra.

Vide 16 El. And by that Writ it appeareth, that he may have G Plow. Com. one Writ for divers Purchases to be made. And also that 457.D. a License made unto an Abbot, in the time of one King,

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is good to purchase Land by in the time of another King.

There is another Writ of Ad quod damnum, where the King granteth to an Abbot, or to a Bishop, license for to purchase an Advowson, and to appropriate the same to him and his Successors for ever.

And another writ where the King granteth unto an Abbot or a Bifhop license for to appropriate an Advowson whereof

they are feifed in fee in their own right.

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By which it appeareth, thata Bishop or an Abbot could not have appropriated an Advowson whereof they were seised in see in their own rights, without the Kings license; and if

they did, it was forfeited for mortmain.

And if an Abbot holdeth of another man by a certain Rent 38 Aff. 5 t. fervice, the Lord cannot release unto the Abbot that Rent Br. Mortmi without the Kings license; and if he do, it is mortmain, and the 20. it is no King shall have the Rent; and therefore is the Writ of Ad Mortmain, quod damnum ordained, that where the Lord hath license to Br. Mortmi release unto the Abbot that Rent, to enquire to whose da-16.and 31.it mage the same shall be, &c. as it shall be of Lands, &c.

A There is another form of Ad quod dannum, where the main, be-King givetha License to alien Lands and an Advowson which cause the are holden of him in capite, unto an Abbot, and that he do Rent is ex-B appropriate them. And another form of Writ where the

King granteth License to one, to alien certain Lands, and a reversion of other Lands to a Chaplain in mortmain.

And if the Villain of an Abbot or Prior do purchase Lands or Tenements in see, the Abbot or Prior cannot enter into them without the Kings License; and if he do, it is mortmain. And it seemeth that the Law is such, because there is a Writ of Ad quod damnum in the Register, to enquire to whose damage the same is; and if the King granted such License unto an Abbot or Prior, that they mayenter into such Lands or Tenements which their Villains have purchased.

And fee the Stat. De Religiosis, how that case shall be taken to be within the words of the Statute, or by equity of the Stat.

And it appeareth by the feveral forms of Writs of Adquod damnum which are in the Register, that the Writ ought to be made according to the Letters Patents of license, because he ought to rehearse the effect of the Letters Patents therein; and therefore the forms of the Writs of Adquod damnum do vary, as the Letters patents themselves do vary. And it appeareth by the Register, That if a Man do purchase Letters patents of License to give Lands unto an Abbot in exchange for a Rent, which the Abbot releases to him, &c. that he

shall have a Writ of Ad quad damnum thereupon.

And

And if a man do purchase a License to found a house with E. Lands, or to make a Prebendary, and to give Lands to the same, &c. that he ought for to have a Writ of Ad quod dam-

num, &c. upon the fame.

And if a man doth devise Lands or Rents to his Executors F and to their Heirs, to dispose according to his will, and afterwards he maketh his will, that they give the same in Mortmain; they ought to have the Kings License to make the Grant, and a Writ of Ad quod damnum upon the same, as

appeareth by the Register.

If an Abbot, or a Dean and Chapter, have a Rent in Fee G intaing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Successors shall distrain for that Rent in other Lands, it appeareth by the Register, that he ought to have the Kings License to make such Grant. And a Writ of Ad quod damnum shall be to enquire what damage or prejudice the same shall be to the King or others, &c. and yet it is hard to prove, how that shall be taken to be within the words of the Statute of Mortmain, because such Grant is a good Grant of a Rent in Fee, although that there were not such Rent before to the Abby, or Dean, and Chapter. It seemeth that the Grant made without License, shall be as a

There is another manner of Writ of Ad quod damnum, and H that is, where the Kings Tenant will alien his Lands which he holdeth of the King to another infee, or in tail, or for life, then by the Course of Law he ought to have the Kings License by his Letters patents so to do, and before the Alienation be made, the King ought to be certified by a Writ of Ad quod damnum, what damage or prejudice that Alienation shall work to the King: but at this day that Writ is not used to be granted, but only the License to alien without regard to any Writ of Ad quod damnum to enquire thereos. But yer such License must not be allowed of by the Justices when the same is shewed, without bringing a Writ out of the Chancery unto the Justices, which is called Quod permittat, &c. for which see Ma 33. H.S. in title, Fines. And the form of the

Writ of Ad quod damnum is such:

Rex Ejcheatori, &c. Præcipimus, &c. inquisit. si sit ad damnum vel prejudicium, &c. Si concedamus I. quod ipse de manerio suo de N. cum pertin. quod de nobis tenetur in capite, nt dicitus, feossare possit P. babendum & tenendum sibi & haredibus suis ae nobis & baredibus nostris, per servitia indedibut & consueta in perpetuum, neene. Et si sit ad damnum vil prejudicium nostrum aut aliorum, &c. Et quod prenum vil prejudicium nostrum aut aliorum, &c.

judicium

9 H.6.9.

41 E.3.15.

5 H.6.9. I Aff 10.

judicium aliorum, & quorum, & qualiter, & quomodo. Et si manerium prædict. teneatur de nobis in Capite, ut prædictum eft, an de alio. Et fi de nobis, tunc per quod fervitium, & qualiter, & quomodo, & quantum prædict. manerium valeat per annum in omnibus exitibus juxta verum valorem ejusaem. Et fi que terre & tenementa remaneant eidem I. ultra manerium prædict. tunc quæterræ & tenementa, & ubi, & de quo. vel de quibus teneantur, utrum videlicet de nobis, an de alio, & st de nobis, tunc per quod servitium, & qualiter, & quomodo. Et si de alio, tunc de quo, vel de quibus, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus. Et inquisitionem inde distincte & aperte. &c.

And if the King will granta License unto his Tenant who holdeth of him in Capite, to alien unto another in fee, and to take back an Estate unto him and his wife, and unto the Heirs of their two bodies begotten, from the same Alienee; and for default of fuch iffue, the remainder unto another in fee tail; and for default of fuch iffue, the remainder to the right Heirs of the first Donee, he in that Case shall have a Writ of Ad quod damnum, &c. to enquire, &c. and yet fuch Writs are

not used to be granted upon such License.

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There is another Writ in the Register, that if the Kings Tenant doth alien his Lands, of which a woman holdeth part in Dower for term of her life, and another holdeth other parcel thereof for term of her life, and he himself holdeth the refidue in fee. Now he shall have a Wrk of Ad quod damnum,

rehearing all the Estates, and the Licenses.

If the King granteth Lands to one for life, and afterwards granteth the reversion to D. in see, and then D. dieth, and his Heir granteth the reversion to R. and W. in tee, and afterwards R. and W. grant the reversion to M. for life, and all those grants are made without License, and afterwards M. fueth to have a License, that she may enterafter the death of the first Tenant for life; she shall first have a Writ of Ad quod damnum, to enquire, &c. and the Writ shall be fuch:

Rex dilecto Clerico suo F. de C. Escheat. suo in Comitat. C. salutem. Supplicavit M. ut cum A. dudum concessisset quod unum mesuagium cum pertin. in N. quod de nobis tenetur in capite ut dicitur, & quod I. & B. uxor ejus tenent ad vitam ipfius B. ex dimissione predict. A. quod etiam post mortem ipsius B. adpræfat. A. & hæred. suos reverti deberet post mortem ejusdem B. D. & hæred. Juis remaneret , ac F. filius & beres ipfius D. ulterius concess. quod mesuag. predict. cum pertin. quod ad ipsum F. & har. suos ratione concessionis & attorattornamenti fibi in hac parte fact. post mort. ejusdem B. reverti deberet, poft mortem ipfius B. R. & W. bared. fuis remaneret, iidemque R. & W. concessiffent, quod mef. prædict, cum pertin. quod ad ipfos R. & W. & hered fuos ration. conceff. & attorn. præd. sibi de præmiss. fact. post mortem ipsius B. reverti debet, post mortem ejusdem B. præs. M. ad totam vitam suam remaner. ita quod post mortem ipseus M. mis. illud cum pertin. post mortem ipfius B. K. & bared. ipfius K. remaneret licentia nostra super boc non obtenta, Velimus concedere eidem M. quod ipfa mef. illud cum pertin.post mortem ipsius B. ingredi possit & tenere adtotam vitam suam de nobis & heredibus nostris per servitia inde debita & consueta, ita quod post mortem ipsius M. præd.mes.cum pertin. prefat. K. & heredibus ipfius K. remaneat, tenend. de nobis & hered. nostris per servitium supradict. in perpetuum: Nos per vos certiorari volentes, si absque damno & prejudicio nostri aut alterius cujuscunque supplicationi prædict. annuer. velimus in hacparte, vobis mandamus quod per sacramentum, &c. ( ut suprausque ibi ) aut aliorum, fi concedamus præfat. M. quad ipfa mesuag. predict. cum pertin. post mortem ipsius B. ingredi & tenere posit in forma prædista necne. Et fi, &c. (ut supra.)

And by that it appeareth that an ad quod damnum shall be awarded, where the King grantetha License unto one for to enter into the Land, which Land the King might grant for a fine for alienation. And also it doth appear by that Writ, That a Clerk and a Chaplain was then Escheator of the County.

And if B. the Kings Tenant doth alien to A. in fee, and C afterwards A. giveth back the same Lands to the same B. and C. his wife in tail, and then A. dieth, and then B. dieth without heir of his body, and afterwards D. brother and heir of A. doth release all his right in the Land unto C. who was the wise of B. in fee without the Kings License, if the King will pardon that trespass for making of that release. A Writ of Ad quad damnam shall be awarded to enquire what damage or prejudice the same shall be to the King, and the Writappeareth in the Register; but such Writs are not used to be sued forth at this day, but such write of Ad quad damnum, &c. But tyet if the King be damnished by any such pardon, in any point whereof he had notice; whether the same shall make void the pardon or not. Quert.

And if the King will grant to one to make a ditch of a p certain length in his own Land, next to the Kings Pond adjoyning to draw the water from the Pool by the ditch to his Mill, rendring yearly to the King and his heirs a cer-

tain

tain rent, a Writ of Ad quod damnum shall be awarded for to enquire what damage the same shall be to the King, and the Writ shall recite the grant, and the rent reserved.

And if there be an ancient Trench or Ditch coming from the Sea, by which boats and veffels use to pass to the Town, if the same be stopped in any part by outragiousness of the Sea, and a man will sue to the king to make a new Trench, and too stop the ancient Trench, erc. they ought first to see a Writ of Ad quad damnum, to enquire what damage it will be to the King or others.

And if the King will grant to any City the affise of bread and beer, and the keeping of weights and measures, an Ad quad damnum shall be first awarded, and when the same is cer-

tified, &c. then to make the grant.

And it appeareth by the Register, that upon every grant to be made by the King, of Lands, Tenements, Liberties, or other things that a Writ of Ad quod damnum shall be first directed to the Escheator, to enourier what damage it will be to the King or others; and in the Writs in the Register, appear notable forms of grants and indivers manners; for in every Writ the manner of the Kings grant, and the effect thereof is specified and recited in the Writ of ad quod damnum.

And if a man will give Lands unto the King in fee, unto the intent that the King shall give them to a Religious house, yet a Writ of Ad quod damnum shall be directed to the Escheator to enquire what damage that shall be to the King, or others, if the King should accept thereof, and give the same

to the Religious house,

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And if the King feifeth Landsaliened in mortmain, and afterwards will give them again to the Abbot, &c. in fee, yet a Writ of Ad quod damnum shall be awarded, to enquire to

whose damage it shall be, orc.

And so if an Abbot purchaseth Lands without License, and afterwards the King will pardon him for the purchase, and grant that he may retain and keep the Lands, yet an Ad

quod damnum shallissue to enquire, &c.

And if the Kings Tenant doth alien without License, for which the King seiseth the Lands: if the King will restore the Lands and pardon the trespass, yet the Writ of Ad quad damnum shall issue forth to enquire what damage it is to the King, and if he made such grant; but that is not in use at this day; but to pay a sine, and upon the License to enter; without suing such writ.

If the King be Lord, and there be Meine and Tenant, and the Tenant holdeth of the Meine by Homage and 205.

003

and the Meine holdeth of the King in Capite, and afterwards the Meine doth release unto the Tenant the 20 s. to hold to him and his Heirs by homage, and I d. without the Kings License, the King may seife those services; and if he will by his grant make restitution to the Tenant Paravail, an Ad quod damnum shall be granted, to enquire to whose damage, &c.

And it appeareth by the Register, that if the Kings Tenant D doth intrude after the death of his Ancestor, without suing his Livery, if the King will pardon the intrusion, yet a Writ of Ad quod damnum shall issue to enquire to whose damage

the Kings pardon shall be, &c.

If a Forrester of one of the Kings Forrests, who holdeth E his Office of the King, granteth the same to another, he ought to have the Kings License; and before such License shall be granted, a Writ of Ad quad damnum shall issue, what damage such License shall be to the King.

And to if the King will license one to cut down his Trees F or his World in his Forred and to make affert of the Wood, or to put it to Tillage, we write of Ad quod damnum shall be

awarded, as appeareth by the Register.

And it the King will grant parcel of his Waste within G his Forrest to another in Fee, rendring Rent, and that the Feossee may enclose the same with a hedge or ditch, &c. a Writ of Ad quod damnum shall be awarded, to enquire to what damage of the King or others the said Grant shall be.

And if he will leafe the same for years rendring Rent, a Writ of Ad quod damnum shall be awarded to the Keeper of the Forrest, to what damage of the King or of his Forrest the

fame shall be.

And if the King will grant part of his free Chafe to one in Fee rendring Renr, and that he may enclose the same with hedge and ditch, &c. a Commission shall be directed to certain persons, to enquire what damage to the King or others the same shall be, &c. and thereupon a Writ shall be directed to return the Enquest and Panel before the Commissioners at a certain day assigned by the Commissioners, and the Commissioners shall make a Precept to the Sherist to do the same, and to return themat the day appointed by them by their Precept.

And now it appeareth by those Writs in the Register, H that in ancient times, upon every Grant, Leafe, Release, Confirmation, or License to be made by the King, that first a Writ of Ad quod damnum was to be awarded, to

enquire

enquire of the whole truth and every circumflance thereof, and what damage or prejudice the King should have by the same; and upon such inquisition certified and returned, to make the Grants, Releases, Confirmations, or Licenses.

But now the experience is contrary, but in the Patents of Grants of License they put in the end these words;

Et hoc absque aliquo Brevi de Ad quod dampnum, seu aliquibus aliis' Brevibus sive inquisitionibus aut mandatis superinde habend, fiend', aut prosequend', &c.

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But in Patents of Licenses, or in a Patent of Release or Confirmation made by the King, those words, absque aliquo Brevi de Ad quod damnum, are not in those Patents of Releases or Confirmations: But yet by reason of the ancient course and form of the Register, it seemeth that the Patents were the better if those words, Et box absq; aliquo Brevi de Adquod damnum, were put into the Patents. Quere of the rigour of the Law, what shall be done in those cases where the Patents want those words, doc.

## Writ of being quit of Toll.

THE Writ to be quit of Toll lieth, where the Citizens or Eurgesses of any City or Borough have been quit of Toll throughout the Realmby grants of the Kings Progenitors, or by prescription; then if the said Citizens, or any man of the said Cities or Boroughs, come with their Merchandizes unroany Fair or Market, and there sell them, or buy any Merchandize, if the Kings Officer will demand Toll of them against the Kings Charter, or against the Ulage or Custom, then he may sue forth and have such Writ: viz.

Rex Ballivis suis de I. salut. Cum per Chart. nostram concesserimus Burgens. Vill. nostra de S. quod ipsi & eorum hared. ac success, Burgens, ejustem Villa, imperpetuum sint quitt. de Toloneo per totum regnum nostrum & potestatem nostram; Vobis pracipimus, quod ipsos Burgenses de Toloneo vobis in Villa nostra prad. prastando quietos esse permittatis, juxta tenorem Chartanostra prad, ipsos contra tenorem ejustem non molestant. in aliquo seu gravantes. Teste, &c.

And upon that he may have an Alias, a Pluries, and Attachment against the Baylies, or those that do grieve him against the form of the Charter: and the Pluries is returnable in the Kings Bench, or in the Common Pleas, at the will of him who would have it. And in that Writ shall be the Clause, Vel causam nobis significes.

004

And

And if the Grant to be quit of Toll be of the grant of the B Kings Progenitors, then the form of the Writ is such:

Rex Ballivis I de E. salutem. Cum inter cateras libertat. Burgensibus villa nostra de C. per chartas progenitorum nostrorum quond. Regum Angl. concessas, concessum statisque eista, quod issi b.credes sui imperpet. sint quieti de Toloneo per totum Regum nostrum, quas quid. Chartas per chartam nostrum, consirmavimus, & in super concessimus eista, quod licet ipsi aliqua vel aliquibus Libertatum & Quietantiarum in eista. Chart. content. bactenus plene usi non furvint, ipsi tamen, bared. & successives sui Libertatione vel impedimento, gaudeant & utantar; Vebis pracipimus, &c.

But that last clause shall not be in the Writ, if the King have not made such confirmation to them. And upon that G he may have an Alias, and a Pluvies, and Attachment, if need

be, against those who take the Toll, &c.

And the like Writ may be for those who ought to be quit D of Murage, Pontage, Picage, Lastage, Passage, and the like,

if they be grieved or diffurbed.

And it appears the in the Register, that King Edward the first did grant unto Merchants Strangers and Aliens, that they should be quit of Murage, Pannage, and Pontage, &c. If they were grieved and disturbed for the same, they should have

fuch Writ, viz.

Rex Collectoribus muragii, pannagii & pontagii in villa de S salut. Cum pro præstationibus & custum.nobis per Mercat. extraneos & alienigenas de bonis & mercimoniis suis infra regnum nostrum adduffis, per Chart selebris memoria Domini Ed', quondam Regis Angl', avi nofri quam inspeximus, concessum sit eifdem, quod ipfi falvo & fecure in regnum & potestatem nostr. veniant cum Merebandises suis quibuscung; de Muragio, Pannagio, & Pontagio liberi & quieti, prout in Chart. præd. plenius continet': Vobis mand' quod B de focios suos Mercator de Societat', &c. alienigenas, de Muragio, Pannagio, & Pontagio, in Villa predict. prestand quietos esse permitt', juxta tenorem Charta pred. ipsos cont. tenorem ejusalem non molestantes in aliquo seu gravantes; & Distriction', si eis ea occasione feceritis, sine dilatione relaxetis eisdem; & fi quid ab eis à xx die Augusti, an', &c. ea occasione levaveritis, id eis sine dilatione restituatis Tafta, &c.

And if any City or Borough ought to be quit of Toll E for the Merchandies which they buy in another Town or place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the name of

their

their Corporation, and may have an Alias and Attachment thercupon, if need be, with these words at the end of the Writ, Et districtionem, si quameis edoccasione secent, &c. as before.

F And the like Writ a man may have against those who will compell him to pay a certain sum of money towards the reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Register, that Spiritual and Religious persons ought to be quit of Toll, Customs, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the same, they shall have such Writ:

Rex Ballivis suis de B. salut. Cum person e Ecclesiasticae, secundum consuetudinem hacten. in regno nostro usitatam & approbatam, ad Toloneum, Pannagium & Muragium de bonis suis Ecclesiasticis alicabi in eodem regn. prestand. nullaten. teneant; vobis precipimus, quod R. Personam Ecclesiade E. ad Toloneum, Pannagium vel Muragium de bonis suis Ecclesiasticis vobis in Vill. nostra predict. præstand. non distringatis, contra consuetud. predict, dum tamen Meychandisas aliquas non exerceat de eist. & Districtionem, si quam, &c.

D

Fut Herle Justice said, that those words, Dum Merchandifas aliquas, &c. were of no effect, because, by his opinion, they are acquit of all things, although they do Merchandize; but now the Statute of H. 8. is that they shall not Merchandize.

And another form of the Writ for Spiritual Persons is in this form:

Chm, secundum consuetud, &c. obtentum, personæ Ecclesiasticæad Toloneum aliquod seu aliam Custumam de bonis suis
Ecclesiasticis, vel de aliis pro sustentatione sua emptis, præstare non debeant; vobis precipimus, quod A. Person, &c. [228]
ad Toloneum aliquod vel aliam Custumam de bonis sis Ecclestasticis venditis, seu de aliis pro sustentation, sua ibidem exempt,
nullatenus distringatis, contra cons. prædici: Distriction, &c.
ut supra.

A By which Writs it appeareth how Spiritual persons shall be discharged of those Tolls, and impositions, and exactions for their Goods which they sell or buy for their sustenance, &c.

Tenants of ancient Demeine by the custom of the Realmought to be quit of Toll, &c. inevery Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patents under the

Kings

King's Seal, to all the King's Officers, and to Maiors, Bailies, &c. and the form of the Patent is such:

Rex universis Ball. & ministris ubicunque infra regnum nostr. Angl. constitutis sal. Cùm, secundum cons. &c. [ut sup. per totum regnum nostrum] Vobis mandamus, quod bomines de Manerio nostro de S. si id. Maner. de antiquo Dominico Coronæ Angl. sit, ad Toloneum vobis, &c. juxta cons. pr.ed: & Distriction, s. &c. In cujus, &c. Issue, &c.

And also the Tenants of ancient Demess may have a Writ directed to the Bailies, or Maior, or others who will compel them to pay Toll, that they suffer them to go quit, &c. and

the form of the Writ is such:

Rex Ballivis A. de I. Salutem. Cum, secundum consuetudinem regni noftri hactenus obtentam & approbatam, homines & Tenentes de antiquo Dominico Corone Angliæ quieti fint & effe debeant à præftatione Tolonei per totum reg um nostrum, vos nibilominus homines & Tenentes de Manerio de S. quod est de antiquo Dominico Coron, Anglia, ut dic', ad Toloneum vobis de bon. & rebus fuis in eadem Vina prestand. gravit. distringit', & ipsos ca occasione multipliciter inquietatis, minus juste, ad grave dampnum ipforum hominum & Tenent', & contra conf. prædict', ficut ex querela sua accepimus; & quia eijd. hominibus & Tenentibus injuriari nolumus in hac parte, vobis pracipimus, quod fi ita eft, tunc ab buiusmodi Districtionibus or inquietationibus eifdem bominibus & Tenentibus ed occupant de cutiro inferend. desigientes, ipios de bujujmodi Toloneo vobis de bonis & rebus juis predict. in eatem Villa proftand. quietos effe permittatis, juxta confuct. predict': & Diftrictionem, fi quam, &c.

And by the Writ aforciaid it doth appear, that Tenants in ancient Demein shall be quirted of Toll, as well those Tenants who hold of the Mannor which is ancient Demein which is in the Scifin or the possession of another man than of the King, as the Tenants of ancient Demein which hold of the Mannor in ancient Demein which is in the King's hands and possession.

And it appeareth also that they shall be quit of Toll for their Goods and Chattels which they Merchandize with others, as well as for their other goods; for the Writ is gene-

ral, pro bonis & rebus fuis.

And it appeareth that that Writ may be fued by all the E Tenants, as a Writ of Monshiraverunt shall be fued; and also that every particular person who is grieved may sue forth the Writ is the will.

And also the Lord in ancient Demess himself shall be as well

well acquitted of Toll thoughout the Realm as the Tenants in ancient Demesn shall be; and that appeareth by the Regifter, of an Attachment fued by the Lord of the Mannor in ancient Demesin against the Bailies of c. because they took And they shall not be only quit of Toll, but

alfo of Pontage, Pallage, and the like.

And also they shall not be contributary to the expences of the Knights in Parliament; and if the Sheriff will diffrain them, or any of them, to be contributary for their Lands in ancient Demesn, then they may sue forth a Writ directed to the Sheriff, that he do not compel them to be contributary to the expences of the Knights, &c. Commanding them in the same Writ, that if they do distrain them, or any of them, that they re-deliver the Diffress, &c. And the Writ may be fued by all together, as a Monstraverunt shall be directed to the Sheriff, or by any of them who are so distrained.

And Tenants at will within ancient Demein shall be difcharged of Toll as well as the free Tenants, or Tenants for term of life, or for term of years of Lands in ancient Demeln, shall be discharged of Toll for their goods, &c.

And see 7 H. 4. that a Tenant in ancient Demesin may Merchandize, buy and fell, and shall not pay Toll: and the same agreeth with the Register. But T. 9. H. 6. it is holden that they shall not pay Toll of things coming of their Tenements within ancient Demesn, nor for things bought for their fustenance, &c. but for other things it is a question : but forasmuch as they shall be quit of Pontage, Murage, 19 H.6.66. and Pallage, I conceive that they shall be quit of Toll generally, although they do Merchandize with their goods. And the Toll ought always to be paid by the buyer, and not by the feller; if it be not by some special Custom, &c.

And the Villains of Lords who come to Parliament shall not be contributaries to the expences of the Knights of the Counties who come to the Parliament: But the Lords shall | 229 | have Letters in their own names, directed to the Sheriff, commanding him that he do not distrain their Villains to be contributary to those expences of the Knights, and if he hath distrained them, to deliver the same to the said

Villains.

And it seemeth reasonable that the Villain may, if he will, fue the Writ, as well as the Lord, &c. which Writs do ap-

pear amongst the Writs to be quit of Toll.

And also Chaplains who are Masters of the Chancery, who are attendants at Parliaments, shall not be contributary by reason of their Benefices unto the expences of Proctors

Proctors made for the Clergy who come to the Parliament; and if they be, they shall have a Writ to the Archideacon and his Officers, commanding them for to difcharge them, and upon that they may have an Alias, and a Pluries, and Attachment against them; and the Writ is such:

Rex Archidiacono Midd. & ejus Offic. ac eorum Commisar. salut'. Cum in Parliamento nostro apud Westmon. anno regni nosiri quarto convocato, per Nos, & per Pralatos, Comites, Barones, & totum Concilium nostrum, ibidem concord. fuiffet, quod Clerici nostri de Cancell. beneficiati, in Parliamentis, Consiliis & Tractatibus nostris, ad obsequendum nobis & populoregni nostri personaliter existent', ad contribuendum ration. Benefic. suorum expens. Procuratorum de Clero aliquarum Dioc. ad bujusmodi Parliamenta, Confilia do Tractatus de mandato nostro venientium, dum in eifd. prefentes forent, effent quieti : Nos, Concordiam prad. illasam in omnibus, maxime cum expens. præd. propter absentiam illorum qui dictis Parliamentis, &c. non inter fuer. prastent', volentes observari, Vobis mandamus, quod T. Personam Eccles. de N. Lond. Dioc', qui Cleric. de Cancell. nostra est, & qui in Parliamento nostro apud Westmon. ultimo tento In obsequio nostro & communitat. populi regni nostri presens fuit, ad contribuendum ratione Beneficii sui prædict. expens. Procuratorum qui ad dictum Parliamentum pro Clero dicta Dioces. vener', seu aliorum Procuratorum ad alia Parliamenta, &c. per nos nunc tenenda venire conting', dum bujusmodi obsequiis intenderit, nullatenus compellat', seu per ministros vestros aliqualit. compelli permitt', fed ipfum de expenf. bujufmodi quietum effe faciat', juxta Concordiam supradict'; & si quid ab eo ea occasione levatum fuerit, id ei fine dilatione restitui; necnon Processibus, si qui ad Censuras Ecclesiasticas contra ip-Jum ex causa præd. facti fuerint, Super sederi, & sentent', fi que in ipfum fulminata fuerit, fine dilatione revocari faciatis. Telte, &c.

Quart for that Statute: and by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes

made in Parliament.

### Writ de Libertatibus allocandis.

HE Writ de Libertatibus allocandis lieth where any Citizen or Burgess, or other man, is impleaded before the Kings Justices, Justices errant, or Justices of the Forrest, and he claimeth and pleadeth any grant of Liberty made unto him by the King, or unto any City or Borough whereof he is a Burgeis, and the Justices do delay to allow that Liberty; then he who is to delayed by the faid Justices may sue forth such Writ directed to the Justices, commanding them to

allow the same: and the Writ is such:

Rex Justiciar. Juis de Banco Salutem. Quia Burgens. nostri de N. per Chartas progenitor. nostror.quond.Regum Angl' clamant habere diversas Libertates quibus ipli & antecessores sui Burgens. ejujd. Villæ à tempore confectionis Chartarum præd. semper hactenus uft funt & gavifi, ficut dicunt : Vobis mandam, quod' ipfos Burgenf. Libertat. præd. coram vobis in Banco uti & gaudere permittat', juxta tenorem Chartar. præd', prout eis uti & gaudere debent, ipsique & anteceffores sui præd. Libertat.illis à tempore præd. semper hactenus rationabilit. uti & gaudere consueverunt. Tefte, &c.

And if any do claim a special liberry to be impleaded within the City or Borough, and not out of the City, then the

Writ shall be special, thus:

Rex eisdem, &c. salutem. Cum inter cæteras Libertates quæ ad meliorationem Villa nostra de R. per Chartas progenitor. nostror. quondam Regum Angl. concessa sint Burgens.ejusd. Villa, concessum fit eisdem, quod ipfi non implacitent seu implacitentur alibi quam infra Burgum præd. coram, &c. ejufd. Vill', de aliquibus tenur. intrinfecis, feutranfer. & contractibus infra eund. Burgum faitis, prout in Chartis præd. plenius continet, qua quidem Libertate iidem Burgenses & antecessores sui ejusd. Villæ Burgens. à tempore confect. Chartar.pr.ed. semper hacten.rationabiliter usi funt sicut dicunt : Vobis mand', quod eofdem Burgenses Libertate præd. coram vobis uti & gaudere permittat', juxta tenor-Chartar-præd', prout ipfi eis uti debent, ipfique & anteceffor. Jui præd.a tempore præd. Jemper hallenus uti & gaudere confuever'. Teste, &c.

And every one who claimeth any Liberty, and justifieth by the same any act done by him in any Court before any manner of Justice or Justices, and the Justices will not allow that liberty, or delay to allow the fame, then he may fue forth that Writ. And those Writs are of several 230 forms, as appeareth by the Register, and may be sued by

a Body corporate, or by any fingle person, as the case shall happen; &c. And the Barons of the Cinque-ports may fue forth fuch Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be fued to the Justices of the Forrest, commanding them to allow Charters granted to any persons, to have Pasture, or to be quit of Pannage

there.

#### Writ de Corrodio babendo.

THE Writ de Corrodio habendo lieth where the King is A So every the Founder in the right of his Crown of any Abby common or Priory, or other Religious House. Now of common perfon,if he right the King ought for to have a Corrody, and a reasobe Founder, and doth not nable allowance for any of his Vadelets in the same House. And so of every Bishoprick in England or Wales, the King give in Frank-alought to have a reasonable Pension for his Chaplain, untill the moigne: Bishop have promoted him to a convenient Benefice. 44 E. 3. And the form of the Writ for the Corrodie is such:

24 0 50. MT. 6.

Vid. 21 E. 4. 8. That the King writ for his Vadelet by his Prerogative; by which Br. collects, that a Founder common person shall not have a Corrodie.

14 H. 6. 11. If the King found a Frank-Chappel, he shall not have Corrodie. nor Penfion.

1 E.4.10. the Writ rodic.

Rex dilectis suis in Christo Priori & Conventui de N. Salut' Volentes dilecto Valego nostro de S. sibi de sustentatione congrua provideri, ipsum ad vos duximus transmittend rogantes quatenus ought to ipsum S. in Domum vestram pred. admittentes, et talem sustenta-King's Title tionem in omnibus qualem P jan defunct habuit dum vixit in ead. to the Cor-ministrari, & ei Literas vestras communi Sigill. Domûs vestra signatas, mentionem de biis que de ead. Domo vestra sic percipiet facientes, fibi super hoc fieri & ei liberari fac', pro quo nobis agend. Domui vestræ præd. tener. volumus special. in futuro; er quid inde ad hunc rogatum nosirum duxeritis faciend. nobis rescribat. per præsent. portatorem. Teste, &c.

There is another form of Writ, where the King will write for the Servants of his Grandfather or Father, thus:

Rex eifd', drc. falutem. Attend. grata & laudabilia obsequia que dilect. serviens nofter A. avo nostro & nobis hallenus impend', volentes eid. A. cui de sustentat. sua per ipsos avum seu patrem nostrum aut nos nond. est provisum, de bujusm. Suffentatione providere, ut tenemur, ipsum ad vos duximus destinand's rogant s quaten. ipfum A. in Domum veftram præd. admitt's admitt', ei talem suffent. & in vietu & vestitu & al. necessariis qual. R jam dejunit. habuit ad mand. ditti avi nosiri de dict. Domo vestra percipiend. ministretis, sibique Literas ve-

stras patent', &c. ut supra.

A

B

And fo where the King is Founder of any Abby or Priory of Nuns, the King shall have a Corrodie for the Queens Maidens, or other of her Coufins, for whom he pleafeth for to write, &c. But if the King will write unto an Abby of Monks, for a Maiden to have a Corrodie there for her fustenance, &c. it seems the fame shall not be obeyed, for the in-

conveniency thereof; nor contrary, if he write to a Nunnery for his Vadelet, to have a Corrodie there: Tamen quære.

There is another form of Writ thus:

Rex dilectis & fidelibus suis Abbati & Conventui de B. salutem. Volentes de gratia nostra speciali dilecto Valecto nostro R. prætextu boni servicii sui nobis impensi & impendend, cui

de sustentat. congrus, &cc. ut suprá.

And upon these Writs, if the Abbot or Prior will not do according as he is directed to do by the Writ, an Alias and a Pluries shall be awarded, vel caufam nobis significes shall be in the Writ of Pluvies, and shall be returned unto the King's Bench; and if he do not return the same, an Attachment shall be awarded against the Abbot, Prior, or Prioress.

And if the King write for such a Corrodie unto an Abby or Priory, and they grant parcel of the Corrodie unto himfor whom the King writeth, but not all, nor fo much

as others had before; then the King, upon a Surmie thereof made in the Chancery, shall grant a Writ fax. It an Abbot grant to A. to have of Sicut alias, directed unto the faid Abbot or Prior, &c. defiring them that they grant the like livelyhood in all things as any other hath had before in the same House. And if the

Abbot or Prior upon the Pluvies return any matter of excuse, wherefore he ought not to grant such Corrodie, which return feemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no fufficient Return, then the King shall grant such Writ:

Note; if an Abby which a Canon person hath cometh to the King by Escheat ; yet he shall not have a Corrodie, because it is not of his foundation. L.s E.s. 118. Br. Corrodie 16. Yet the King may have a Corrodie where he is not Founder, but that is by special Grint. 1 E.4.10.

38 E. 3. Tr. (ontemp. 5. & 39 H. 6. 48. if the Abbot will not admit the King's Vadelet, he who ought to be admitted shall recover damages, and not the King, for that the King hath onely the Prefentation to the Corrodie, and the party the damages.

44 E. 3.25. per Kneun, if the King and another give Land to erect, &c.

the King is Founder.

22 E.4.17,18,19. Huffiy and Fairbut if he grant Corrodie, or fo much Bread and Ale,&c. it is a good Grant of those things, but it is no Corrodie, but a Profit; for every Corrodie hath his beginning by the Foundership.

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Rex, &c. salut. Cum nuper volentes dilecto nobis N. pretextu diutini servic. sui Dom.Ed.nuper Reg. aco nostro & nobis hacten, impent, de sustenta congrua providere, ipsum ad vos miserimus. & vobis plur. mandaver', rogantes quatenus eund. N. in Domum vestram admitteretis, & et talem sustentation', &c. concederetis, & Literas, &c. faceret', vel causam nobis significaretis, quare mandat. nostristoties vobis indè direct minime paruassis, ac vos quassa. acusas excusat. nobis in Canc. nostram miseritis quas insuscent. reputavin': Vobis igitur mandam', firmiter injungentes, quatenus eund. N. in domum vestram, &c.

And if an Abbot or Prior at the King's request do grant a F Corrodie to B. for life, and afterwards B. will furrender the Grant of his Corrodie unto the Abbot or Prior, to the intent that C. have the same for his life, then he ought for to sue a

Writ to the Abbot or Frior thus:

Rex dilectis sibi, &c. Priori & Conventui de R. salutem. Cim dilectus nobis S. quandam certam sustentionem in Prioratu vestro præd. ad rogatum nostrum obtinet, & in voluntat. existat quòd dilect. Valestus noster N. babeat totum statum quemidem S. babet in sustentatione prædict?, & ad illum essecum S. Literas patentes sibi de dicta sustentatione per vos jactas vobis restituere set paratus, sicut dicit, supplicans nobis ut assensum nostrum ad hoc præbere dignemur: Nos, supplicationi illius S. innuentes, & insuper volentes præs. N. gratiam uberiorem sacere in hac parti, Vobis mandam, rogantes, quòd si idem S. dictas Literas ad essecum præd. restituere voluerit, tunc receptis penes vos Literis illis, ipsum Nin Domum vestram præd. admittentes, ei sustentat.

G

19E. 3. illis,ipjun Nin Domum vestrum pred. admittentes, ei sustentat. Fines 50. A. pred. ad totam vitam ipsus N. de dicta Domo vestra percipiend. Fine was le-concedat, eique Literas vestras patentes de ead. sustent. sub signilis voca de Dominsvestra pred. sievi & ei deleberari sac'; & quod ad bunc. Off. 11. vogatum nostrum duxeritis saciend. nobis rescribat. per prasent. Teste, &c.

8 Nuper obist

of a Corrodie, and dec. de libero tenem'; quod vid. 14H. 6.11 and 12. Affife lieth of a Corrodie, contrary of a Penfion.

And upon that he shall have an Alias, and a Pluries, and A Attachment, if need be.

And if an Abbot or a Prior admit one to a Corrodie, upon B the King's Writ fent him, if he dieth who is fo admitted, the King may write for another to have the same Corrodie.

But if the King have a Pension in any Abby or Priory for his Chaplain, if the Abbot or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth,

dieth, the King cannot write for or grant a new Penfion unto another Chaplain during the faid King's life; and if he 14 H. 6. doe, the Prior is not bound to grant the same: but it is o-11 and 12. therwise of a Corrodie.

And yet some say, that upon the Cession of any Abbot or 14 H. 6.12.

Prior, the King shall have a new Pension granted to his

Chaplain: but Quere of that. And if the King have a Corrodie in an Abby or Priory to 8 E. 4.17.ac. have certain Bread, and certain Gallons of Beer, &c. the King may grant the same to several men: but where he hath a Corrodie to have livelyhood of one man, to fit with the Servants of the Abbot, there he cannot grant the fame 14 H.6.

D but to one man only. And the King may release to the 11 and 13,

Abbot or Prior his Title to the Corrodie, if he will.

And if the Abbot or Prior do receive one to a Corrodie upon the King's Letter, and thereupon doth make him a Grant thereof; thereby the Abbot of Prior and their Successors shall be bound for ever. Otherwise it seemeth if the Abbot had granted the same upon the King's request.

And T. 4. E. 3. it is holden, that the Abbot or Prior who 50 Aff. 6, holdeth of the King in Frank-almoign shall not be chargeable 44 E. 3.24.

with any Corrodie.

## Writ de Annua Pensione.

ND whence the King hath a yearly Penfion out of A an Abby or Priory for his Chaplain, the King shall fend his Writ unto the Abbot or Prior, &c. to grant the faid Penfion to his Chaplain; and the Writ shall be fuch:

Rex dilectis in Christo Abbati & Conventui de C. salutem. Cum vos ratione novæ creationis vestræ præf. Abbat. teneamini uni de Clericis nostris, quem vobis duxerimus nominand', in quadam Annua Pensione de Domo vestra percipiend', quousq, sibi provisum sit de Beneficio Ecclesiastico competenti; ac nos promotionem dilecti Clerici noftri à suis exigent. meritis affectantes, ipsum ad bujusmodi Pensionem à vobis percipiend. duxerimus nominand'; Vobis igitur mandamus, quatenus eidem A. talem Penfionem de dicta Domo veftra in forma præd. percipiend', que dantes deceat, percipientema, fortius obligatum reddere debeat, concedatis, Literas vestras pat. figill. Capituli vestri signat. eidem A. super hoc fieri facient'. Et quod inde duxer faciend nobis fine dilat rescribat'. Tefte, &c.

And the form of the Grant of the Pension is such: universis ad quos presentes Literæ pervenerint Abbas de T. & Conventus ejusa loci salut', &c. Noveritis nos, ad infantiam Illustrissmi Principis Ed. Dei gratia Reg. Angl', dedisse & concessisse dilectro nobis in Christo A. Clerico, centum solidos sterlingorumin Festo S. Mich. annuatim de Cameranostra percipiend', quousq; eid. A. de Benesicio Ecclestastico competenti sibi per nos suerit provisum, & hoc et quam eitius facultas se obtulerit facer. promittimus. Dict. autem A. per se, vel suum Procur. legit. ad hoc constitut', dictas v. l. singulis annis apud S. recipiat. In cujus, &c. commun. sigil. Domûs nostræ duximus apponend'. Dat. in Capitulo nostro, &c.

And it appeareth by an ancient Roll in the Exchequer, of what Abbies or Priories the King ought to have a Corrodie and Penfion, and of what a Penfion only, and of what a Cor-

rody only; the Copy of which followeth.

# The Names of the Corodio's and Pensions in England, which are of the Kings Gift according to the Book in the Exchequer.

IN the Abby of Glaffenbury, In the Abby of Hide, I.C. I.C. I.P. I.P. In the Abby of Mochelny, In the Abby of Battel, I.C. 2. C.I.P. 1.P. In the Abby of Temksbury, In the Abby of waverly In the Abby of Clive, 1.C. In the Abby of Malmibury, I.P. 2.C. H.P. In the Abby of Ford, In the Abby of Sleveborn, I.C. In the Abby of Buckfast, In the Abby of Southwick, In the Abby of Sherburn, I. C.I.P. 1.C.I.P. In the Abby of Sufefter, In the Abby of Abbotsbury, 2.C.I.P. In the Abby of Stonler, I.C.I.P. In the Abby of Bewly, I.C. I.P. In the Abby of Briftock'm, In the Abby of Shaftsbury, In the Abby of Hurtey, I.P. I.C. [232] In the Abby of Winton, 1.C. In the Abby of Reading, 1.C.1.P. In the Abby of Worwel, I.P.

In

In the Abby of Meffenden , In the Abby of Gloucester, 2.C.I.P. In the Abby of Langton, 1.P. In the Abby of Evelham, I.C.I.P. In the Abby of Pershore, I.C.I.P. In the Abby of winchcomb, I.C. I.P. In the Abby of Ofney, I.C. I.P. In the Abby of Tame, 1.C. In the Abby of Dorcefter, I.C.I.P. In the Abby of Abingdon, 2.C.I.P. In the Abby of Evelham, I. C.I.P. In the Abby of Godstow, 1.P. In the Abby of Notley, In the Abby of Southbampt. i. C.1.P. In the Abby of Lillil, I.C. In the Abby of Shrewsbury, I.C.I.P. In the Abby of Chefter, I.C. I.P. In the Abby of Valerial, I.C. In the Abby of Burton, I.C. 1. P. In the Abby of Thorney, 1.C. 1. P. In the Abby of Ramsey, i.c. I.P. In the Abby of Peterborough, I.C.I.P. In the Abby of Crowland, I.C.I.P. In the Abby of S. Benedict in Norfolk, I.C. I.P. In the Abby of Bury, I.C. R.P.

In the Abby of Tetfurth, 1.C.1.P. In the Abby of Pipmel, 1. C. I.P. In the Abby of Leiceft. I.C. In the Abby of Newsted, In the Abby of Pomfret, I.C.I.P. In the Abby of Worstore, 1.C. In the Abby of Blith, In the Abby of Waltham, 2.C.I. P. In the Abby of Barking, In the Abby of Tower-hill, In the Abby of Bermondsey, In the Abby of Christchurchland, 1. C.1.P. In the Abby of Fever ham, In the Abby of chirsey, In the Abby of S. Mary in York , In the Abby of Durham, 1.C. In the Abby of Tinmouth I.P. In the Abby of whithy, 1.C. I.P. In the Abby of Mewes, I.C. In the Abby of Altney, I.C. I.P. In the Abby of Wardon, I.C. In the Abby of Criston, 1.C. In the Abby of Selby, I.C. In the Abby of Sparball, In the Abby of Dorfley, I.C. In the Abby of Spalding: PPZ In

In the Abby of S. Augustine in Canterbury, 1.C.1.P. In the Abby of Thornton, I.C.I.P. in the Abby of Twierdart, I.C. n the Abby of Noveyton, I.P. In the Abby of coteshall, I.C. In the Abby of Monmouth, In the Abby of Westminster, In the Abby of S. Saviours in Canterbury, I.C.I.P. In the Abby of Daventry, I.C. In the Abby of cristall, 1.C. In the Abby of Stratford, In the Abby of Milton, 2.C. In the Abby of Serne, 1.6. I.P. In the Abby of combe. I.C. In the Abby of Grenuby, 1. P. In the Abby of Merival, I.C.I.P .. In the Priory of Bath, I.C In the Priory of Mountagn, 1. C. In the Priory of Tavestock, In the Priory of S. Augustine in Briftoll, 2.C.I.P. In the Priory of Almsbury, In the Priory of Stethorne, In the Priory of Bradftow, 1.P.

In the Priory of Worcester, In the Priory of Sedsworth. I.C.1.P In the Priory of Dunstable, I.C.1.P. In the Priory of Royston, 1.C. In the Abby of Kennelworth, I.C.I.P. In the Priory of Coventry, In the Priory of Tutbury, I.C. In the Priory of Ely, I.C. In the Priory of Bedwell, In the Priory of Norwich, I.C.I.P. In the Friory of Lenton, I.P. In the Priory of Sefword, In the Priory of Marton, I.C.I.P. In the Priory of Lewes, I.C. In the Priory of Wenlock, In the Priory of Winchester, 1.C.1.P. In the Priory of Bordfly, In the Priory of Standeate, I.C. In the Priory of S. Andrews I.C. I.P. in Northampton, In the Abby of Bodman in I.C. Cornwall, In the Abby of S. James in 1.C.1.P. Northampton.

# Writ de Idiota inquirendo, & examinando.

TOte, that the King by the Law of right is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the Kings Protection; and if he be put out of the King's Protection for his Offence, then every man may do to him as against the Kings Enemy, and he hath no remedy for the same by the Kings Laws. And because that every man is within the Kings Protection, an Idiot, who cannot defend nor govern himself, nor order his Lands, Tenements, Goods, nor Chattels; the King of right ought for to have him in his cuftody, and to rule him, and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of Prarogativa Regis, cap. 8.

And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his birth, the King may award his Writ to the Escheator of the Stamford County where such Idiotis, or unto the Sheriff, to enquire 34. 18 E. thereof; and the Writ which shall be directed to the Eschea- 3. Scire fa-

tor shall be such;

Rex Escheatori suo, &c. salutem. Quia accepimus quod I. de B. Fatuus & Idiota existit, it à quod regimini fui ipfius, terrarum, tenementorum, bonorum & catallorum suorum non Sufficit, & quodipse in fatuitate sua magnam partem terrar. & tenement. suorum alienavit, & etiam magnam partem bonorum & catallorum suorum disfipavit, in exhered. Suam, & nostri [233] prajudic. manifestum: Nos indemnitati ipfius in hac parte prospicere volentes, vobis mandamus, quod ad ipsum I. in propria persona vestra acceda is, & ipsum viis & modis quibus super statu suo melius poteritis informari circumspecte examinetis, & nihilominus per sacramentum proborum & legalium hominum de Ball. vestra, per quos rei veritas melius sciri poterit, diligenter inquiret, si idem I. Fatuns & Idiota st, sicut prad. est, necne: & si sit, tunc utrum à nativitate sua, an ab alio tempore; & si ab alio tempore, tunc à quo tempore, & qualit, & quomod; & filucid, gaudeat intervallis; & fild. I. in eod. statuexistens terras aut tenementa a= liqua alienavit, necne; & fific, tunc quas terras & que tenement', & ubi, & cui vel quibus, & in cujus vel in quor. manib. ter. & tenementa sic alienat. existunt, & qualiter, & quomodo, & quaterr. & que tenementa fic adbuc remanent, & de quo vel de quibus tamterr. & tenem. fic alien', quam terr. & tene-

menta sibi retenta, teneant, & per quod servic', & qualit', & quomodo, & quantum valeant per an inomnibus exitibus, & quis propinquior har ejus sit, & cujus atatis. Et inquisic inde distincte & aperte fact nobis in Canc. nostram sub sigillo vestro & sigillis corum per quos, &c. mittat', & boc Breve. Teste, &c.

And there are two other manners of Writs of another form A in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him, and to enquire thereupon. And the form of the Writ which is directed unto the Sheriff

for to enquire of an Idiot is such:

Rex Vic, &c. Præcip. tibi, quod per sacram, &c. diligent. inquiras utrum I. de B. frat. & heres T. de B. à nativit. sue tempore semper hactenus purus Idiota extiterit, per quod custodia terrar. & ten'torum suor. in C. ad nos debeat pertinere, an per infortunium vel alio modo in hujusm. instrmitat. postea inciderit, propter quod hujusmodi custod. ad nos pertiner. non debeat; & si per infortunium vel alio modo, tunc per quod infortunium, & quali & quo modo, & cujus ætatis suerit, & de quo terræ & tenementa immediate tenent, & per quod servic, & quis modo ea teneat, & quant.valeant per ann. in omnibus exit, & quis medio tempore exit.eorum percepit. & inquisic. inde distincté & aperté, &c.

And there is a form of Writ directed to the Sheriff, for to inquire of Idiots, which is much of the like form as the first Writ above is; and it is directed to the Escheator to make

the enquiry.

And although a man be found Idiot by Inquifition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that be returned into the Chancery; yet he who is so found Idiot may in person, or by his friends, come into the Chancery before the Chancellour and the Kings Councel, and shew the matter, and pray that he may be examined before the Chancellour and the Kings Councel, whether he be Idiot or not: or he may fue forth a Writout of the Chancery to certain persons, to bring him who is fo found Idiot before the King and his Councel to Westminster, to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Escheator, or Sheriff, and also the examination which the Sheriff hath made, and returned thereupon, shall be of no effect, but the same Office shall be taken as void, without any other traverse, as it seemeth. And the Writ which shall be directed to the party to bring the Idiot before the Kings Councel shall be fuch:

Rex I. de T. sal. Quia datum est nobis intellizi, quod R. frater tuns, filius & hær. B. defunctipatris tui, Idiota est, & non same mentis existiti ità quod regimini sui ipsus aut terrarum suarum providere non sussicit. Nos, volentes de statu præd. R. fratris tui certiorari, tibi præcipimus, sirmiter injungentes, quod. Statim visis præsent, præd. R. in custo dia tua existent, ut dic, coram nobis & Concilio nostro apud Westm. sine dilatione duci sac, ità quod stibidembac instante die Jovis, ibid. coram eod. Concilio nostro examinand, & ad saciend. de eo quod per advisamentum Concilii nostri super hoc duxerimus ordinand. Et hoc sub pæna centum librarum nullatenus omitras. Tesse, &c.

And he who shall be said to be a Sot and Idiot from his birth, is such a person who cannot accompt or number twenty pence, nor can tell who was his Father, or Mother, nor how old he is, &c. so as it may appear that he hath no understanding of reason what shall be for his profit or what for his loss: But if he have such understanding that he know and understand his letters, and to read by teaching or information of another man, then it seemeth he is not a Sot, nor

a natural Idiot.

# Writ de Apostata capiend.

C THE Writ de Apostata capiend. lieth where a man doth enter into Religion, and is professed, and afterwards he leaveth his house, and is vagrant, and running about the Country, against the Rules of his Order of Religion; then the Abbot or Prior where he is professed may certifie the same under his Seal into the Chancery, and pray to have a Writ to the Sherist to apprehend him, and deliver him to the Abbot or his Attorney; and the form is such:

Rex Vic', &cc. salut'. Quia frat. I. Canonicus de A. spreto Habitu Ordinis illius, in Habitu seculari de patria in patriam in Balliva tua vagatur & discurit, in anime sue periculum & Ordinis sui scandalum manisestum, sicut dilect. nobis Abbas de A. nobis significavit per Literas suas patentes; Tibi precipimus, quòd praf. I. ubicung; in Ball. tua inveniri contigerit, sine dilatione arrestes, & præd. Abbati, velesus in bac parte Attorn', liberes, secund. Regulam Ordinis pred. castigand'.

Tefte, &c.

A And upon that he may have an Alias and a Pluries against the Sheriff, and an Attachment, if he will not execute the Writ.

B There is another Writ of another form thus:

PP4

Rex

Rex eidem, &c. sal. Quia frat. T. Monachus de S. Ordinis Clunasien, in Ordine illa prosessus, spreto Habitu Ordinisillius, &c. sicut dilectus nobis in Christo Abbas de B. per Literas suas patent nobis signisic', Tibi prac', quod pras &c.

ut suprà.

And it feemeth, that although he who departeth from his C House or Religion doth not change his Habit, yet if he be Vagrant,&c.and the Abbot of the House do certifie the same, he shall have such Writ, notwithstanding these words in the Writ (Spreto Habitu, De. ) for those are but words of form, and not of substance; for the Habit of Religion is the Obedience and profession which he hath made to such Rule,&c. and if he relinquish that Obedience, and the Rules of that Religion; and departeth, it feemeth that he doth relinquish the Habit: and if that departure be certified by any Abbot where such perion was remaining, and under his Obedience when he departed and relinquished his Religion, the same is fufficient to have such Writ upon such Certificate; or if it be certified by him who is the Vifitor of the Religious House, &c. But there are not any Writs in the Register framed upon fuch Certificate made by any Vifitor, or Abbot of any other House, upon which the party who left his Habit was not remaining at the time: and therefore Quare of the fame.

## Writ de Leproso amovendo.

THE Writ de Leproso amovendo lieth where a man is a Lazer D or a Leper, and is dwelling in any Town, and he will come into the Church, or amongst his neighbours where they are assembled, to talk with them, to their annoyance and disfurbance; then he or they may sue forth that Writ for to remove him from their company, and the Writ is such:

Rex Vic', vel Majori & Vic. Lond. sal'. Quia accepimus E quod I. de N. Lepros. existit, & inter homines civitatis pradict. communit. conversatur, & cum eis tam in tocis publicis quam privatis communicat, & se ad locum solitarium, prout moris est, & ad ipsum pertinet, transferri recusat, ad grave dumpnum hominum pred', & propter contagionem morbi pred. periculum manisest'; Nos bujusmodi periculo, prout ad nos pertinet, precaver', & super pramiss. quod justum est & usitat. seri volentes, vobis pracipim', quod assumptis vobiscum aliquibus discretis & legalibus hominib. de civitat. prad. non supest', qui de persona pras. I. de N. & hujusm. morbo notitiam habent meliorem, adipsum I. accedatis, & ipsum in prasentia prad.

bræd. hominum faciatis diligent. videri & examinari; & fi ipsum Leprojum effe inveneritis, ut prædictum eft, tunc ipsum honestiori mod. quo poteritis à communicatione præd. hominum amoveri, & se ad locum solitarium ad habitand. ibid, prout moris est, transferri faciatis indilat', nè per hujusmodi commun. conversationem suam hominibus præd. dampn. vel periculum eveniat quoquo modo. Teste, &c.

And upon that he may have an Alias, and a Pluries, and Attachment against the Mayor, or against him to whom the

Writ is directed, if he will not execute the Writ.

But it seemeth, if a man be a Leper or a Lazer, and will keep himself within his house, and will not converse with his neighbours, that then he shall not be removed out of his house. But there are divers manners of Lepers; but it seemeth that the Writ is for those Lepers who appear to the fight of all men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Flesh, and by the fmell of them: But for those who are infected with that Disease in their bodies, and it doth not appear outwardly upon their bodies, Quare whether such Writ lieth for to remove them:

# Writ de deonerando pro rata portione.

H THe WritDe deoverando pro rata portione lieth, where a man holdern 10. Oxgangs of Lands by Fealty and 20 s. Rent of the King, and the Tenant doth alien one part, or one Oxgang, to one man, and another Oxgang to another man in kee, and to to other the rest of the Oxgangs, and the Sheriff or the Kings Officer will distrain one of the faid Tenants for the whole Rent; then he who is diffrained may

fue forth that Writ, which is thus:

Rex Vic', &c. falutem. Monstraverunt nobis I, A & W, quod cum quatuor bovat. terre cum pertin. in E, que fuer. B, O que de nobis tenentur per servitium tresdecim solid. per annum, reddendorum per manus Vic. nostri Com. præd. qui pro tempore fuerit, ad manus præd. I, A & W, necnon ad manus T, ex perquifito suo devenerunt; & licet iidem I, A & W duas bovat. terræ inde tantummodo teneant, tu tamen præd. tresdecim solid. annuos à praf. I, A & W, omisso praf. T, [235] qui dictas duas bovatas terra residuas tenet, exigis, & ipfos I, A & W pro præd. tresdecim solidis annuis nobis reddend. per varias Districtiones compellis, in ipfor. I, A & W dispendium non modicum & gravamen, super quo nobis supplicaver. eis congruum remedium adniberi. Et quia eisdem

I. A. & W.injuriari nolumus in hac parte, tibi pracipimus, quod si inquisit. Super præmiss. faciend', vel also modo legitimo, tibi constare poterit præd. quatuor bovat terræ per fervitium trefdecim solidorum de nobis tantummodo teneri, o ipsos I. A. & W.duas bovatas terræ inde, & præd. T. alias duas bovat. terræ residuas tenere,ut eft dictum, tunc acceptis apræf. I. A. & W. iis que ad nos pertinent pro rata portione tenura sua quam inde tenent, ipsos de residuo servic. præd. quietos esse permittas. Proviso semper, quod dict. residuum servitii illius apræf. T. ad opus nostrum levet, ut est justum. Teste, &c.

And it appeareth by that Writ, that notwithstanding the A

Br. Apparcount 2 I.

29 H.S.f.

129.

Statute of Quia emptores terrarum, that if the Kings Tenant do alien part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute faith, quod feoffatus teneat pro particula illa, &c. But it seemeth the King is not bound by the Statute, but a common person is. For if a man hold 28. Periins 20 Acres of Land by Fealty and 20 s. Rent of another man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the rate and value of the Land which he hath purchased, and shall not distrain one Alience for the whole Rent, &c. But if the Kings Tenant doth alies part of the Lands which he holdeth of the King without License, then the King may chuse whether he will take the Alienee for his Tenant or not, and then it is a question whether the Alienee shall have such Writ; but if the Alienee doth pay a Fine to the King for the Alienation, it is reason that he have such Writ as before, if he be diffrained for the whole Rent which iffueth out of all the Lands, whereof he hath purchased but part, &c.

And the like Writ as before is awarded to the Queens Officers, where they diffrain one Tenant for the whole Rent, where he holderh but part of the Lands, and feveral

other Tenants hold the refidue thereof.

Br. Appar-(OU 11.2 I.

And if a man, who holdeth 100 Acres of Land, ought p by his Tenure thereof to repair such a Bridge, if he alien in Fee 20 Acres to one, and 20 Acres to another, and one of themonly be diffrained to make the Regarations upon a Presentment found; he shall have a special Writ to the King's Officers, that they do not distrain him, but according to the rate of his portion of the Land which he holdeth. And the

29 H.8. t. 28.

> Writ is fuch: Rex dilectis & fidelibus suis I. de T. & sociis suis Just. no-Ilris ad inquirend. de defectibus magni Pontis Canc', & ad defectus

defectus illos reparari & emendari faciend', affignatis, falut'. Ex parte R. nobis gravit. conquerent. eft monftratum, quod cum presentat. fit coram vobis. quod idem R. tenet quatuor bid. ter. cum pertin in D. in com.pred', que de reparatione Pontis pred. ab antiquo onerari consuever'; or thus, quæ ad reparation. Pontis præd.teneri afferentur; & licet ipfe nisi tantum xx. acras terræ de dictis quatuor hid terra, or quidam alii totum resid corundem quatuor hidar teneant; vos tamen, occasion. Prefentac. pred', septem libras, ad quas dicta quatuor hida terra pro reparatione Pontis prædiet. apportionat. sunt, de eod. R. ac li ipje quatuor hidas terr. præd. integrè tenuerit, cum nonteneat, omissis aliis Tenentibus prædict', levar.nitimini, & ipsum ea occasione gravit. distringi & multipliciter inquietari faciatis, in ipsius R. grave dampnum, & status sui depression, manifestam, super quo nobis supplicavit de remedio provider. Et quia ipsum R. in hac parte indebit.nolumus onerari, vobis mandamus, quodsi per inquisitionem inde in prasenc. ipsius R. fi interesse voluerit, capiendam, vel alio modo legitimo, vobis constare poterit ipsum R. nisi xx. acr. dictar. quatuor hidarum terræ tantummodo tenere, & resid. earund. quatuor hidarum terræ in manibus aliorum Tenentium exister', ut est dictum, tunc dictas septem libras, ad quas dict. quatuor hide terre pro reparatione Pontis predia. fic affeffe funt, tam de pref. R. quam de aliis Tenentibus prædict', viz. de quolibet corund. juxta ratam tenura fuæ earund. quatuor. hidar. terra, nemini in hac parte parcend', nec aliquem Tenent. earund. ultra ratam tenure (ue indebite onerand, levar. fac', Presentac. præd. non obstante. Et si quid ab eodem R. ultra portionem tenure sue pred. minus jufte levatum fuerit, id ei fine dilatione restitui fac. Tefte, &c.

There is another form of Writ for the King's Tenant, where he is diffrained for all the Rent, where he holdeth but part of the Lands out of which the Rent ought to be paid:

which see in the Register.

But look the Statute of 34 Edw. 3. cap. 15. That if the Ring's Tenant in Capite alieneth his Lands in Fee without License, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements: and therefore, Quere the meaning of that Statute, and what is intended thereby.

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# Writ of Supersedeas.

The Writ of Superfedeas lieth in divers cases: As if a man A be sued, and a Capias or Exigent be awarded against him, he may by his friend sue forth a Supersedeas out of the place where the Capias or Exigent was awarded against him: or out of the Term he may sue forth a Supersedeas out of the Chancery directed to the Sherist, that he take Sureties of him, &c. to appear at the day, &c. and that he let him at liberty: or he may find Sureties in the Chancery to appear at the day of the Return of the Capias or Exigent; and upon this he shall have a Supersedeas to the Sherist, that he let him go, if he have arrested him thereupon; and if he have not arrested him, that then he do not arrest him, but suffer him to go in peace. And the form of the Writ is such:

Rex Vic', &c. Cum A implacitet coram nobis per Breve nostrum B, & quosdam alios in dicto Brevi nostro contentos, de quadam trangreff. eidem A per prafat. B & alios pradict. allato, ut dicitur, ac idem B, pro co quod non venit coram nobis ad respondend. prefat. A de transgressione prædict, in Exigend' in Com. tuo positus set ad utlagand', ipso de Exigend. prædict. penitus ignorante, unde nobis supplicavit, ut, cum ipse paratus Gt super pramiff. in omnibus ftare juri, velimus ei in hac parte Subvenire: Nos, Supplicationi præditt. quatenus justum juerit annuentes, tibi præcipimus, quod si prædict. B in Com. tuo personaliter accedens se reddiderit Prisone nostre, ut est moris, tunc Exigend. pr.ed. supersedeas; & postmod. si idem B invenerit, tibi lufficientes Manucaptores, qui eum manucapient habere coram nobis ad talem diem quo Breve nostrum de Exigend. prædict. coramnobis est retornabile, adrespondendum præf. A de tranfgr. prædict, & ad faciendum ulterius & recipiendum quod Curia nostra considerabit in premis', tunc prefat. B à Prisona pradict. (fi ea occasionet & non alia, detineatur in eadem) interim deliberari fac. per Manucaptionem præd: & habeas ibi nomina Manucapt. prad', & hoc Breve.

And when he findeth Sureties in the Chancery for to appear at the day of the Return of the Exigent, then he shall have a Superfedeas of another form, which shall be

fuch:

Rex Vic., &c. Supplicavit nobis C, quòd cùm B implacitet coram nobis per Breve nosirum præfat. C & quofdam alios de quadam trango, erdem B per præf. C & alios prædict. illata,

HÌ.

ut dicit', & licet idem C paratus sit præf. B de transer. præd. si que fuerit, respondere, & in omnibus stare jur. secundum Legem & consuetudinem regni nostri Anglia, ipfe tamen, pro co quod tu coram nobis retornafti, quod idem C non fuit inventus in Ball. tua, juxta Processum inde coram nobis habitum, per te in Exigend. positus existit in Com. tuo ad utlagand'; velimus ejus indempnitati in hacparte providere. Nos, pro so quod W, R & I manuceper. coram nobis in Cancell.nostra habere præf. C coram nobis ad diem quo Breve nostrum de Exigend. vers. ipsum C eft retornabile, ad respond. præf. B de transgr. præd', vol. eid. C, &c. si in Exig. præd. occasione præmis, & non alia, positus existat, ut est dictum, tunc in Exigend. ill. ulterius faciend. interim Supersedeatis per Manucaption. suprad: & ha beas ibi tunc hoc Breve. Teste &c.

And if the Clerk, who hath the keeping of the Rolls for the taking of Statute-Merchants, forge a Bond in the name of another, and putteth the Mayors Seal, and a Seal in the name of the party, to the same, and makes an Enrolment thereof in the Rolls, and afterwards doth certifie the same into the Chancery, for which a Capias is awarded against the party; then he against whom such Process is fued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole matter, and reciting that the party hath upon that matter fued forth an Audita querela, directed to the Justices of the K. Bench, commanding them to call the parties before them, &c. and commanding the Sheriff, that if the party who is fo fued will find fufficient Sureries to the Sheriff, to appear at the day in the K.Bench, and to pay the Debt, if he be condemned, that then he do surcease to arrest or to trouble him, &c.

And if a man do cite another by the Popes Bull perfonally to appear at the Court of Rome, &c. against the Statutes; now if he who made the Citation be committed to Prison, he may fue in the Chancery to have a special Writ directed to the Sheriff, rehearling the matter, commanding him, that if the parties will find sufficient Sureties, body for body, to appear before the King and his Council at a certain day, and perform what the Court shall adjudge or be decreed for the King or his Council, that then he let him at large: and by that Writ the Sheriff ought to fet him at liberty; and if he will not, he shall have an Alias, and a Pluries, and Attach-

mentagainst him.

If a man depart from his Mafter without sufficient cause, and another knowing the same doth retain him, for which the Mafter bringeth a Writ against him for the retaining of [237]

his Servant, upon which a Capias is awarded, he may in the Chancery find Sureties to appear in Banco at the return of the Writ, and have a Superfedeas thereupon to the Sheriff, not to arrest him; and if he; have arrested him, to set him at liber ty.

And the like Writ and Superfedeas shall be awarded out E of the Chancery, if the Action be brought against the Servant for his departure, and a Capias awarded, &c. he may find Surcties in the Chancery for to appear at the day, and have a Superfedeas to the Sheriff, that he do surcease for to arrest him, &c.

And if a man be fued in the Common Pleas in Debt, or A in Trespass for damages, and a Capias or Exigent is awarded, if the Debtor do find Sureties in the Chancery to appear before the Justices at the day of the Return of the Writ, and to stand right according to Law, he shall have a Superfedess to the Sheriff not to arrest him; and if he hath arrested him, to set him at large. But it seemeth, that upon a Capias or Exigend. ad satisfaciendum, the Sheriff ought not to let the party at liberty after he hath taken him, because he is in Execution for the party, &c. And so upon an Exigent awarded in a Writ of Account, he may sue forth supersedess.

And fo if a man doth become Surety for another, to pay E a Fine in the Common Pleasor Kings Bench, and the Fine is not paid, &c. for which cause Process of Utlagery is awarded against the Surety, &c. at the Exigent awarded against the Surety, he may sue forth a Supersedeas, and find Sureties in the Chancery to appear at the day, and to stand right to the Law: and thereupon he shall have a Supersedeas to the Sheriff, that he do not arrest his Surety, and if he hath arrested him, that he let him at liberty.

And it seemeth reasonable that such Writ shall be granted, because the Fine is a duty to the King, and the King may respite the same if he please; but if an Exigent be awarded upon a Judgment at the Suit of the party, such Supersedess is not allowable.

If a man be indicted before Juftices of the Peace, and C put in Exigent, he may find Sureties in the Chancery to appear at the day of the return of the Process awarded by the Justices of Peace, and thereupon have a Supersteast to the Sheriff not to arrest him, and if he have arrested him, to set him at liberty; and that Surety shall be body for body, &c.

If a man be put in the Exigent at the Suit of another in D feveral personal Actions, he may find Sureties in Chan-

cery,

cery body for body, to appear to every Action at the return of the Writs; and thereupon he shall have a Supersedeas to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the days, &c. commanding him not to arrest him,&c. And the forms of the Writs of the Supersedeas are in divers manners.

And if a man be indicted before Justices of Peace, and a Capias or Exigent be awarded thereupon, and afterwards the Indictment is removed by Certiorari; the party out of the Chancery may fue forth a Supersedeas to the Sheriff not to arrest him, &c. because the Indictment is removed by certiorari,&c. or the Justices of Peace ex officio ought for to award a Supersedeas to the Sheriff after the Certiorari is come to them, to remove the Indictment, as it feemeth: Tamen quere. And in such case he may have a Supersedeas out of the Chancery directed to the Sheriff, commanding him, that if the party will yield himself to the Sheriff, and find Sureties to appear at the day of the return of the Writ, that then the Sheriff do not arrest him, &c.

If a man sueth a Knight of St. Johns of Jerusalem and other by their proper names, and not by the name of Knight of St. Johns, &c. and he be fued to the Exigent, the Supersedeas shall be purchased in the name of the Prior, and of the faid Knight, his confrater, in the Chancery, and there they may find Sureties to appear at the day; and thereupon they shall have a Superfedeas to the Sheriff, that

he do not arrest him,&c.

If a man be condemned in Debt or Trespass by false Verdict, and a capias be awarded to arrest the party, now if the party fueth an Attaint, he may come into the Chancery, and there find Sureties that he shall appear at the day, &c. and will answer the party, and satisfie the King and the party what belongeth to them, if the Attaint doth pals against him; and upon the same he may have a Supersedeas to the Sheriff, that he do not arrest him, and the fornt of the Writ is such:

Rex Vic', &c. Monstravit nobis A, quod cum B nuper implacitaffet in Cur. noftra coram Juftic. nostris nuper itinerant. in Com. prædict. præfat. A & quosdam alios de quadam transgr. eidem Bper præf. A, &c. illata, ut dicebat', de qua quidem tranfgr. idem A per Inquisition. (in quam se posuit coram prafatis Jufticiariis) convictus fuit, per quod prædict. A carcerali cuftod. extitit mancipatus, in eadem moraturus quousque nobis de eo quod ad nos pertinet in hac parte, & præf. B de dampnis fibi adjudicatis, fuerit fatufact', ac jam præf. A arrainavit,

per Breve nostrum retornabile cor. nobis, &c. ubicunque, &c. quandam Juratam XXIIIj. Militum ad convincend. Juratores, inquisitionis pradict', & nobis supplicaverit, ut, pendent. Jurata præd. sit coram nobis, ipsum A à prisona qua sic detinetur levari faciamus, ità quod eam prosequi possit secund. Legem,&c. Nos, volentes præf. A in præmiss. &c. subvenire, & pro eo quod id. A invenit coram nobis in Cancellar. nostra certos Manucaptores, viz. A & B de Com. tuo, qui manuceperunt, viz. quilibet corum de satisfaciend. tam nobis de co quod ad nos pertinet, quam praf. B de dampnis, ut prædicitur, adjudicatis, si Jurata prædict. contra eum tranfierit, feu idem A eum non fuerit profecutus: Tibi præcipimus, quod ipsum A aprisona præd', si ea occafione, & non alia, detinetur in eadem, fine dilatione deliberari fac. per Manucaptionem suprad, it à quod Juratam præd.projequi poffit, prout decet; & habeas coram praf. Juftic. ad diem prad. boc Breve. Tefte, oc.

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If a man be condemned in Trespass, and the Plaintiff a prayeth an Elegit, and a Capias is awarded against the party for the Kings Fine, the King may grant a Superstale directed to the Sheriff, that he do not arrest the Defendant upon the Cupias, because that the Plaintiff hath made his election to have his Execution by Elegit.

And if in Trespass the Defendant do agree with the Plaintiff pendant the Suit, he shall have a Supersideas to the Sheriff, that he do not execute the Process sued forth against him; but then it seemeth the same Agreement ought for

to appear upon Record in the Court,&c.

If a man be condemned in Trespals, and the Desendant doth bring an Attaint, and the Plaintiff such an Execution by Elegit, and a Capias is awarded against the Desendant for the Kings Fine; the Desendant in Chancery may sue a Supersedeas of the Capias, reciting in the Writ how that the Desendant hath brought an Attaint, and that the Plaintiff hath sued forth an Elegit, commanding the Sheriff to whom the Supersedeas is directed, that if the Desendant do yield himself to prison, and there find Sureties to the Sheriff to satisfie the King for what doth belong unto him, &c. that then he do deliver him out of prison upon that Security, if he conceive the same to be sufficient Security.

If a man sucth a Writ de uxore abdutta cum bonis viri, p and a Capias or Exigent be awarded thereupon, the Defendant may find Sureties in the Chancery, body for body, to appear at the day; and upon the same he shall have a Supersedeas to the Sheriff, to set him at liberty, if he have

arrested

Vom Pilon

arrefted him. And so upon an Appeal of Rape, if the Defendant in Chancery finds Sureties, body for body, to appear at the Return of the Writ, and to stand to the Law, he shall have a Supersedeas to the Sheriff to set him at liberty;

And so if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a Superfedeas to the Sheriff, reciting the matter, commanding him to set him at liberty, if he have arrested him.

If a man fueth a Supplicavit out of the Chancery to arreft a man to find Sureties of Peace, the Defendant who is arrefted may have a Superfedeas in Chancery to the Sheriff, commanding him not to arreft him; and the Writ shall be such:

Rex, &c. salutem. Licet nuper ad supplie. M, nobis suggerentis I eidem M de vita sua ac mutilation, membrorum suorum graviter comminatum fuiffe, tibi per breve noftrum praceperimus; quid ipsum I coram te personaliter venire faceres, et ipsum ad sufficient. Manucaptores inveniend', qui ipsum I sub certa pana, sibi per te rationabiliter imponend, pro qua respondere volueris, manucap', quod ipse damnum vel malum aliquid eidem M non inferret, seu inferri procuraret, compelleres, et quod si hoc coram te facere recufaret, tunc ipsum caperes, et in prisona nostra de N salvo custodiri faceres, donec Securitatem invenerit in forma præd : quia tamen Ret S. &c. coram nobis in Cancell. nostra personaliter comparentes manuceper. pro prædict. I, quod ipse damnum vel malum aliquod eidem M de corpore suo non inferret, nec inferri procurabit, videlicet, quilibet eorum sub pæna xx 1. quas concesser. de terris et catallis suis ad oras nostrum levar, si idem I damnum aliquod eidem M de corpore suo intulerit, aut inferri procuraverit: Tibi præc', quod execution. Brevis noftri prædict. tibi in bac parte directi Superf. per Manucaption. predict', &c. Tefte, Cro.

And if the Justices of Peace do award a Precept of a Warrant against a man to find Sureties for the Peace, he against whom the Warrant is may find Sureties in the Chancery for to keep the Peace, &c and upon the same have a Supersedeas to the Justices of the Peace, that they do surecease, &c. to arrest him, &c. and thereupon the Justices ought to surcease to make any Warrant against him afterwards; and if they have made any, that they ought to award a Supersedeas to the Sheriff, commanding him to sureceive and the Writ directed to the Justices of the Peace is such a

Rex dilect. & fidel. suis, Justic. suis ad Pacem nostram in com. Berk. conservand. assign', falut', &c. Supplicavit nobis W, quod cum ipse metuat ipsum ad prosequutionem T per vos capi & arrestari, ac graviter imprisonari, quousque Securitatem invenerit, quod idem W dampnum vel malum aliquod eid. T de corpore suo non faciet, nec fieri procurabit, velimus Captioni & Arrestationi prædict. per Sufficient. Manucaptores Supersedere jubere : Nos, pro eo quod R,S,P,& F de Com.W, in Cancell. noftra personaliter constituti manuceperunt. pro ipso W, quod ipse dampnum vel malum aliquod eid. T de corpore suo non faciet, nec fieri procurabit, viz.quilibet eor. sub pæna centum librarum, quas concesserunt de terris & catallis suis ad opus nostrum levari, in casu quod dampnum vel malum aliquod eid. T de corpore suo per præfat. W vel procuration. suam eveniat, supplicationi predict' annuentes, Vobis mandamus, quod Captioni & Arrestationi corporis præd. W ea occasione faciend. supersed. omnino per Manucapt. Supradict', &c. Telte, &c.

And if the Wife be infear or doubt of her Husband, that F he will beat her, or kill her, &c. she may sue a Supplicavit in Chancery against her Husband, to find Sureties that he do not beat her, nor evil-intreat her, and for to govern, rule; and chastise her reasonably; and the Writis such:

Rex Vic', &c. Supplicavit nobis R, ux. I B, quod cùm ipsa de vita sua, &c. per præsi B graviter & manifeste comminata existat, velimus pro securitate ipsus R in hac parte provider', Nos, supplicationi predict annuentes, tibi præcipimus, sirmit.injungentes, quod ipsum I B coram te corporalit.venire sac', & ipsum ad suste. Manucapt. inveniend', &c. ut suprà, quod ipse præsat. R bene & honeste tractabit & gubernabit, & quod ipse dampum vel malum aliquod eid. R de corpore suo, alit. quàm ad virum suum ex caus. regimin. & castigation. ux. suæ licitè & rationabilit pertin', non saciet, necsieri procurabit, quovis modo compellas. Et si hoc coram tel. &c.

And if a man in a Court-Baron in a Writ of Right, or in a other Court, as in London, in a Writ of Right vouch a Foreiner to Warranty,&c. the Tenant who voucheth may fue forth a Superfede.as directed to the Court, &c. commanding them that they do not proceed in the Plea, until the Warranty be determined,&c. quad vide in the Register, fol.5, 11 or 13. And upon the same he may have an Alias, and a Pluries, and an Attachment against the Bailies, or Major of London and Sheriff, if they will not surcease,&c.

And if a man fueth a Prohibition to the Spiritual Court B and to the Parson, and notwithstanding the Spiritual Judge doth proceed to excommunicate the party, and upon Certificate

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Certificate thereof in the Chancery a Writ of Excommunicato capiendo is awarded; he who fued the Prohibition shall have a Supersedeas to the Sheriff, reciting the whole matter, commanding him that he do not arrest the party; and if he have arrested him, that he deliver him: quod vide in the Register, fol. 67. And he may have a Supersedeas out of that Court out of which the Prohibition did issue, &c.

If the Collectors of the Subsidy or Tenths granted by the Clergy are excommenged by the Ordinary for their Contumacy, &c. and that be certified, and thereupon a Write directed to the Sheriff for to arreft them, if it be testified in the Chancery afterwards by the soveraign of the Collectors that they have satisfied and submitted themselves; then upon that a Supersedeas shall be directed to surcease to arrest them; and if he hath arrested them, that he deliver

them.

And if the Bishop do certifie an Excommunication into the Chancery against one for a contempt in a Suit depending before him, and thereupon a Writ of Excommunicato capiendo be awarded; if the Official do by his Letters after certifie in Chancery, that the Defendant hath appealed to Kome, or elsewhere: now upon that Certificate he shall have a Supersedens to the Sherist, that he do not arrest him pendant the Appeal; and if he have arrested him, that then he do deliver him,&c.

And so if he who is Excommunicate sheweth in Chancery the Popes Letters, testifying that he hath appealed, &c. he shall have a Supersedeas to the Sherist, commanding him for to surcease, &c. and if he hath taken him by force of the Writ of Excommunicato capiendo, that then he do deliver

him : quod vide Regift. fal.68.

If a man take one as his Villain, and the other fueth a Writ de homine replegiando, and he claimeth him as his Villain; he who is taken may put in Surcties in Chancery, to yield himself and his Goods, if, &c. and thereupon he shall have a Supersedas directed to him who took him, not to take him; and if he hath taken him, that then he do deli-

ver him. Regist. 79,80.

If a man do hold Plea in the County of a Trespass which is Vi & armis, &c. the Desendant may sue out of the Chancery a Supersedeas unto the Sherist, or to the Bailies of the Hundred where the Plea is holden, reciting that a Plea of Trespass Vi & armis shall not be holden in a less Court than before the King, or other Justices by his commandment. Regist 101.111.

Qq2 And

And upon a Writ of Error brought of a Judgment given E in London or other Court, the party shall have a Superfedeas directed to the Mayor and Sheriffs, or other Officer, to fur-

cease to award Execution. Regist. fol. 129.

If a man be distrained by a Process which issueth out of F the Exchequer, as Executor to an Accomptant there, he may have a Supersedeas out of the Chancery directed to the Treasurer and Barons of the Exchequer, surmising that he is not Executor nor Surety for the Accomptant, &c. commanding them that they do surcease, until they have enquired the truth thereof.

And the like Writ is given where the Barons do award G Process of Distress against any one who hath not any of the Lands of him who was the Accomptant, &c. but of his Purchase before he was Accomptant: quod vi. Regist. 144.

And if the Sheriff doth hold Plea of 40 s. the Defendant H may fue forth a Superfedeas that he do not proceed, &c. or after Judgment he may fue a Superfedeas directed to the Sheriff, commanding him not to award Execution upon fuch Judgment; and upon that an Alias, a Pluries and an Attachment. Regilt.145.

If a man for a debt of 10 l. fue in the County by divers Plaints there, every Plaint under the fum of 40 s. where the debt is one entire debt, the Defendant may fue a Supersede as to the Sheriff, commanding him not to hold Plea in

those Plaints.

If a man fue one in the County before the Sheriff for breach of Covenants, to his damage of 101. or above the fum of 40 s. then the Defendant may fue a Superfedeas to the Sheriff that he do surcease; quod vi. Regist. 146.

And if a man do fue forth an Audita querela, to avoid a A Statute-Staple or a Statute-Merchant, he shall have a Superfeders to the Sheriff, not to do Execution hanging the Plea,

&c. Regift. 182.

Note that the Constable of Dover, who is Warden of the B Cinque-Ports, cannot hold Plea of a thing which doth belong to be determined in the County, if it be not of a thing concerning the keeping of the Castle of Dover; and if he do, the party shall have a Writ directed unto him, to surcease, and upon the same an Alias, and a Pluries, and an Attachment; and the Writ shall be such:

Rex dilecto & fideli suo B, Constabulario Castri sui Dover, & Custodi Quinque Portuum suorum, vel ejus locum tenenti, falutem. Cum inter cæteros Articulos quos Domin. Ed. quond. Rex Angl', avus noster, ad emend. populi regni sui concess. or-

dinatum

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dinatum sit, quòd Constabularius Castri Dover. non implacitet ad Portam Castri prædict. aliquod Placit. forinsecum de Com, quod non tangit Custodiam ejusd. Castri; ac vos quodd. Platitum inter W de C & P, de quodam debito quod idem W à præsat. Pexigit, & quod quidem Placit. Custodiam Castri prædnon tangit, coram vobis ad Portam Castri illius teneatis, & ipsum P eà occasione per varias districtiones inquietatis minus juste, contra tenorem Articulorum prædict, sicutex parte ipsus P nobis datur intelligi: Nos, Articulos præd. inviolabiliter observari volentes, vobis mandamus, quod si tà est, tunc de Placito illo cor.vobis ulterius tenendo Supersedeatis omnino, ipsumq; P contra tenorem eorund. Articulorum non molestetis in aliquo seu gravetis; & Districtionem, si quam, &c.

And if the Constable doth hold Plea of any thing of which he ought not for to hold Plea, the party shall have hisaction upon the Statute, although he doth not sue forth

any Writbefore directed to the Constable.

# Writ de procedendo ad Judicium.

D Note that by the Statute made An. 2 E.3. cap.8. it is enacted, that Commandment be not either by the great Seal nor the petry Seal to delay common Right; but if such Commandments come,&c. that the Justices shall not successe to do right in any point.

And by the Statute made An. 14 E.3. cap. 14. the Justices

shall not surcease for the great Seal or lesser Seal.

And by that it appeareth, that the Kings Justices shall proceed according to Law, notwithstanding the Kings Commands directed and delivered to them: and if the party thinketh in his Conscience that such Commandments shall be made, then he may sue forth a Writ upon that Statute, commanding them to proceed, notwithstanding such

Commandments, and the Writ shall be such:

Rex dilectis & fidelibus suis W, &c. & sociis suis Justic.

ad Assi.in Com. Salop. assign', salutem. Chim in Parliamento
nostro apud Northampton an. regni nostri 2. convocato, per
Nos, Prelatos, Comites, Barones, & alios Magnates, ac totam
Communit. regni nostri in eodem Parliamento existentes, concord. suerit & statutum, quod non mandetur per Magnum Sigill.
nostrum, nec per Parvum Sigillum nostrum, ad Communem Legem
impediend. seu prorogand', & si talia miridata veniant, quod
fusic. ea de causa ad fustic. sac. nullationus supers. prout in
Statut. præd. plenius continet: Vobis mandam', quod ad justic.
partibus in Assi. Novæ dis', quam T arrainavit coram vobis

per Breve nostr. versus I, & Auxor. ejus, & alios in Brevi nostro origin. contentos, de Tentis in E, faciend', virtute alicujus mandati de Magno Sigillo & Parvo Sigillo nostro vobis directi seu dirigend', nullatenus Supers. contra tenorem Statuti suprad'.

Tefte. &c.

Entit feemeth to be in vain to fue forth fuch Writ, if the Justices do confider their Oath, and their duty to God and the King: but because some Justices are fearful, and will not do a thing which may turn to their displeasure, that Writ was ordained, as it seemeth, and for no other cause, for the Statute was sufficient in it self: and the party may have in the end of the Writthese words, viz.

Sed ad captionem ejuschem Affise, prout in jure & secund. Legem & conf. regni nostri Angl. fuerit faciend', proced'. Teste,

dre.

And by the Statute of west. 2. upon issues joyned in the E Common Pleas or Kings Bench, they shall be tried by Niss prius before the same Justices in the Country. And by the Statute of Fines, in the time of Vacation those issues shall be tried before one of those Justices, associating to him a Knight, &c.

And by the Statute of York, a Justice of Assis, associating to him an honest man, shall take Niss prices, and try the Islues arising thereupon taken in the Common Pleas or Kings Bench, if they need not great Examination, &c. But in those cases it appeareth by the Register, the King by his Writ may restrain and command the Justices, that they do not award Niss prices; and if they have awarded any Writ of Niss prices, that they fend a Supersedes, and the Writ shall be such:

Rex Juftic. suis de Banco satutem. Licet de communi confilio regni nostri concord. existat & statutum, quad Inquisitiones & Furat. in Placito terra capiend', que magna non junt examination', capiantur in patria coram uno Juft. placei ubi mot. existant, sociato sibi aliquo probo homine patrix, milit. sive alio, itaquod communis dies det. in Banco, & certi dies & locus dentur in patria in præsent. part', & etiam quod Inquisitio &: Furat. in Placito terra magnam examinac. requirent. coram duobus Just. de Banco in form. prædict. capiantur: quia tamen Placitum quod est coram vobis in Banco pred. per Breve nostrum int. W Petentem & T Tenent. de Maner. de S cum pertin. in Com. W Specialit. nos tangit, præsertim cum idem T dictum Manerium teneat ad termin. vita fue ex conceff. noftra, & poft mortem ejufd. T idem Manerium ad nos & hæred. noftros integre reverti debet; volentes indempnitati nostræ prospicere in bac parte, Vobis mandamus, quod si ad Inquisic. inde capiend.pro-

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cedere vos conting, tunc bujusmodi Inquisic. coram vobis in Banco præd. & non alibi capiatis, concordià & Statuto præd. non obstantibus: & si Inquisic. indè per Breve de Nisi prius capi demandaveritis, tunc Inquisic.illi in patria capiend. supersederi demandetis. Teste, & c.

There is another form of Writ for that matter in the Re-A gifter. And M.32 H.6. it appeareth, That it is in the Justices discretion, whether they will grant Niss prius, or not; and by the like reason, the King at his discretion, and by his Writ

directed to the Justices, may restrain the same.

And Niss prime shall not be granted where the King is party; without the Kings special Warrant, or the Kings Attorneys assent, notwithstanding the aforesaid Statutes.

Writ upon the Statute made for the Kings Steward and Marshal, that they do not hold Plea, if not, &c.

B CEE by the Statute of Articuli Super Chartas, cap. 3. That the Steward and Marshal shall not hold Plea of Freehold, nor any Plea of Trespass, but only of Trespass done in the Kings House, and other Trespasses done within the Verge, and of Contracts and Covenants which some of the Kings Houshold ought to have against another of his Houshold, and no others; and no Plea of Trespass shall proceed which is not brought before the King remove out of the Verge where the Trespass shall be done, so that they be ended before the King go out of the bounds of the Verge where the Trespass is done; & if they cannot be ended there, the parties shall cease, and shall be tried at the Common Law. And the Steward shall not take cognisance of Debts of other men, but only of fuch as be of the Kings House; he shall hold none other Plea by Obligation made at the Diffress of the Steward or Marshal: and if they do contrary to that Ordinance, it shall be void. And the Court of the Marshalsea nor the Jurisdiction thereof shall not exceed above twelve miles by the Statute made 13 R. 2. 6.3. And a man may add in an Action brought against him in the Court of the Steward or Marshal, that he was not of the Kings Houshold at the time of the Trespass or Contract made, or that the Plaintiff was not one of the Kings Houfhold at that time. And if a man be fued in the Court of the Steward and Marshal contrary to the Statute, then he who is grieved shall have such Writ: Rex

Rex Sen. & Mareschallo Hospitii fui , salutem. Cum inter Ceteros articulos quos Dominus Ed. quond. Rex Angl', avus nofter, ad emendation. status populi fui concessit, ordinatum fit, quod Sen. & Mareschallus Hospitii nostri non teneant Placita de Libero tenemento, de Debito, Conventione, Transgr', feu contracta hominum populi, nisi tantummodo de Transgr. Hospitii nostri & aliis Transgr. infra virgam, & de Contractibus & Conventionibus qu. aliqui de codem Hospitio aliis de codem Hospitio fecerint, & in eodem Hospitio, & non alibi; ac jam ex querela A & B acceperimus, quod vos, ad profecutionem I de L. Placitum inter praf. A & I, qui de codem Hofpitio non funt, ut dicitur, de quod. Debito quod idem A de præf. I exigit, tenetis coram vobis, in ipfius A damnum non modicum & gravam', & contra formam Ordinationis prædict': Nosigitur, volentes dictam Ordinationem in omnibus & fingulis suis articulis observari, vobis mandamus, quod si ità est, tunc de Placito illo coram vobis ulterius tenendo Supersedeatis omnino, ipsum A contratenorem Ordinationis prædict. non molestantes in aliquo seu gravant'; & Diffrictionem, fi quam, &с. Теfte, &с.

And if the Plea be lawfully begun before the Steward D and Marshal of the Kings house within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby discontinued, and then it behoveth the party to commence his Action at the Common Law, and not within the Verge before the Steward and Marshal; and if he do,

the party grieved shall have such Writ:

Rex Senesch. & Mareschal. Hospitit sui falutem. Cum inter ceteros articulos quos Dominus Ed. quond. Rex Angi, avus noster, ad emendationem status populi sui concessit, ordinat. sit, quod Senesch. & Maresch. Hofitii nostri non teneant Placitum de Libero tenemento, de Debito, de Conventione, seu Contractu, bominum populi, nisi tantummodo de Transgr. Hospitii nostri, & alis Transgr. factis infra virgam, & de Contractibus & Conventionibus qualiquis de dicto Hospitio fecerit alteri de codem Hofitio, & ineod. Hofitio, & non alibi, & nullum Placitum de Transgr. placitent. aliud, quod non sit attacbiatum per eos antequam nos erimus virgam ubi Tranfgr. facta fuit, & Placit. ill. celeriter de die in diem placitent & terminent, ita quod placitent. & terminentur antequam exeamus eand. virgam ubi transer. facta tuit, & si forte infra bondas illius virga terminari non poterint, ceffent hujusmodi Placita coram Senesch. Maresch', & fint Querentes ad Communem Legem; ac jam ex gravi querela A & B accepimus, quod vos ad fectam R de B, ipsos, &c. ad refp. coram vobis prædict. R de quad. Transgr. eid. R per prafat. A & B infra virgam nostram apud E an' &c. 12. factas

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facta, ut dicitur, quod quid. Placitum per vos attachiatum non fuit antequam virgam ill. exivimus, distringitis, & ipsos ea occasione multiplicit. inquietatis minus juste, in ipsor. A & B dispendium non modicum & gravamen, & contra tenorem articulorum pr.edici. Nos igitur, volentes dictam Ordination. inomnibus & singulis suis articul. inviolabilit. observari, Vobis mandam, quod si ità est, tunc ipsos A & B, ad resp. coram vobis de hujusmodi stransgr, nullatenus distringatis, sed de Placito illo coram vobis uterrius tenend. omnino supers. & Districtionem, si quam, & c. Teste, & c.

And if a man be fued by Plaint before the Steward and Marefehal of the Kings house, who is not of the King's houshold, and the Debtor plead, and affirmeth the Jurisdiation of the Court, and the Cause be adjudged against him; yet he shall have an action upon the Statute against the party who such him there; quad vide T.3 H.3. title Estoppel.

# Writ of Certiorari to remove Records, &c.

B THE Writs of Certiorari for to remove Records out of one Court into another are of several forms; and the form of the Writ to remove the Record of Re-diseifin is such:

Rex Vic', &c. Quia quibustibet certis de causis certior. velimus super Recordo & Processu cum sum inquisition. sact. ecoram te & custodibus Placitorum Coron. nostra in Comit. tu a apud N per Breve nostrum super quadam Rediss. I per R sact', ut dicitur, de uno mesuae. cum pertin. in N; Tibi præcipimus, quod si judicium indè redditum sit, tunc Recordum & Processum præd. cum omnibus ea tangentibus nobis sub sigillo tuo distincté & apertè mittas, & hoc Breve, ita quod, &c. ubicunque, &c. ut inspectis Rec. & Processum ed. ulterius indè seri fac. quod de jure & secundum Legem & consuetudinem regni nosiri Angl. suer. faciend'. Teste, &c.

And he may remove it after a Diffeifin,&c.

And if a man be attainted in a Redissission or a Postdissission, and hath no Lands within the County to be put in Execution, he may remove that Record by a Certiorari into the K. Bench, and there have Execution. And he may remove a Recovery in an Affize of Novel dissission into the K. Bench cient Deby a Certiorari in like manner. But the Writ of Certiorari mesn, 39 H.

But see 44 E.3.28. 36 H.8. Br. Certiorari 20 there is no such Writ of Certiorari to remove the Record in Com. B. immediately, but first in the Chancery. Yet 43 Ms. 20, the contrary is admitted.

Gith.

faith, Si judicium inde redditum sit, tunc Record', Proces', &c. as above. By which it appeareth, that it ought that the judgment be given in the Assis, exc. otherwise it seemeth he shall not have the Writ; for the Certiorari is said to remove the Record, to the intent he may sue forth Execution upon the same when it is removed in the K Bench, for there they may award execution into every County to execute the same. If a man do recover Lands by Assis of Novel disseif, and D

Br. Cert.

If a man do recover Lands by Assis of Novel disself. and the Desendant will sue a Certificate before other Justices, there he ought to sue forth a Certiforari to the Justices of Assiz, to certific the Record unto the new Justices who hold Plea upon the Certificate, and that word (Sine dilatione) shall not be put in any Writ which hath a certain day of return.

And if a man recover per Affize, and the Defendant will E fue an Attaint before other Justices, then he ought for to have a Certiorari to the Justices of Affize to certifie the

Record, Si judicium redditum fit.

And if a man recover before Justices in Eyre in an Affize of Novel diffeis. the other party may sue forth an Attaint before other Justices, and have a Certiorari to the Justices in Eyre to send the Records before other Justices.

37 H.6.16. And the King may fend his Writ of Certiorari to the Ba-F rons, Treasurer, and Chamberlains of the Exchequer, to certific the Record of Assize in the Treasury in their custody into the Kings Bench.

There is another Writ of Certiorari to the Treasurer and Chamberlains of the Exchequer, to certifie the Record of the Assize taken, but the judgment was not given, because the Defend. died: but the Writ is of little effect, for that by the death of the Def. before judgment the Writ is abated.

9 E.4. 50. 4 hou. 24 E.3. E 24. 15 E.4, b 5. 8 E.4. 25, 26.

And if a man will fue an Attaint upon a Recovery in an G Affife, which Record of Affize is in the Treasury, then he who bringeth the Attaint ought to sue a Certiorari to the Treasurer and Chamberlains of the Exchequer, to certifie the Record of Affize before the Justices before the Attaint be sued forth.

If a man do recover damages in an Affize of Novil differs. A and before he hath Execution of the damages the Record is fent into the Trea ury; then he may fue a certiferar to the Treafurer and Chamberlains, to certifie the Record of Recovery in the Affize before the King, that Execution may be awarded for the damages.

And if a man recover Lands and damages in an Affize of B Fresh farce, and the Desendant hath not any thing within

he

the City or Borough for to fatisfie the damages; then the party may fue a Certiorari to the Mayor or Bailies, to certifie the Record into the Kings Bench, that he may have Execution of the damages recovered.

If the King maketh certain persons Justices of Assife,&c. in one County, and afterwards at another Affifes he maketh other Justices of the same County; a general Certiorari shall be fued to the first Justices, to certifie all the Records of Affize and Juries which were taken in that County before

the new Justices.

And in Athize of Navel diffeis. if the Verdict pass for the Plaintiff, and before judgment be given a new Commission is to other Justices of the same County, the party for whom the Verdict passed may sue forth a Certiorari to the first suflices, to remove the Record into the Kings Bench, to have judgment given there upon that Affize and Verdict paftor may fue a certiorari to the first Justices, to send the Record before the new Justices, that they may give judgment thereupon : and it behoveth to have another Writ unto the new Justices, to receive the Record, and that they proceed to judgment. And when the Record is removed after Verdick given before other Justices, and they delay to proceed to judgment upon the Verdict, the party for whom the judgment should be given may sue forth a Writ directed to them quod receptis & visis Record. & Process. prad. they proceed to judgment,&c. And thereupon the party may have an Alias, 20 Jup p and a Pluries, Vel causam nobis significes: and if they will not do any thing, whether he shall have an Attachment is a Que. 40. 3:344. Stion; for there is a Statute made A.3 E.3. which willeth, that Commissioners in special case limited by the Statute shall be punished for their misdoings, but it seemeth it shall not be if the Statute be not made for that cause only.

And An. 27 E. 3. in Assise, a Justice was indicted, for that he caused an Indictment, which was found to be but Trespass to be entred in Record as Felony,&c. And the same was adjudged a void Indictment, because it was to make void a Record. But yet it seemeth he might be indicted for taking of mony, or for other falfity, which doth not deftroy and

defeat the Record. Quere.

And a man may have a Writ to the same uffices before whom the Verdict passed, &c. to proceed to Judgment, as well as he shall have a Writ to other Justices before whom the Record is removed.

If a man in an Assise of Novel diffeisin, or other Action real, before Justices in Eyre youch one to Warranty,

who presently entereth into Warranty, and afterwards loseth; the Plaintiff shall recover, and the Tenant shall have Judgment to recover in value against the Voucher: now if he who recovered in value will have Execution of the Lands recovered in value, he ought to sue a Certiorari to the Treasurand Chamberlains of the Exchequer, to certifie the Record in the Assis into the Chancery; and when it is there certified, the King shall send the Record by Mittimus into the Common Fleas, and thereupon the Justices shall award a Scire facins against the party against whom the Recovery was, to come and shew why Execution should not be done of Lands in value.

And a man may sue a Certiorari directed to the Justices of H Affise, to remove the Records of Affise into the Chancery, and also a Deed which is before them, &c. and afterwards he may sue forth a Writ of Mittimus unto the new Justices of Assis of those Records, and of the Deed which remained

before the other Justices.

And if the Husband and Wife sue a Bond which is made I to the Wife in the Common Pleas, and the Deed is there denied, for that they remain in the keeping of Custos Brevium, and the Husband dieth; the Wife may have a Writ out of the Chancery directed to the Custos Brevium in the Common Pleas, that he deliver the Deed to the Wife, because the Plea

is determined by the death of the Husband.

And when the Justices in Eyre come, and shall be in any K County by the Kings Commission, then a Writ shall be sent to the Justices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Justices in Eyre, to be determined before them: and if the Justices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ shall be sent to the Justices in Eyre, to send those Records and Pleas which are not determined nor adjudged into the Common Pleas again. And the Writ shall be such:

Rex dilecto & fideli suo S salut. Cum Loquela quæ suit cor. Just. nostris de Banco per Breve nostrum int. S Petent. & I Tenent, de uno mesuag. cum perein in T in Com. N una cum Brevi predicit, cor.vohis & sociai vestris nuper Just. nostris tinierant. in Com. prædict.missa suiser præd. remanserit indistillud quibusd. cert. de caus. in itinere præd. remanserit indiscussim, absorbe quod id. Placit. alicubi adjornat suisset placitand, per quod ex parte ipsius S nobis est supplicat, ut sibi in præmiss. Justic. sacere vesimus; Nosea de causa attendentes expediens fore, quod Just. nostri de Banco super Record. et Processus

Loquelæ

# Writ of Certiorari to remove Records.

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Loquelæ prædiel' cor. vobis & præfat. sociis vestris in itinere .prad. certiorent', vobis mandam', quod Record. et Proceff.prad', [244] una cum Brevi præd. et omnibus aliis ea tangentib', præf. Juft. nostris de Banco sub sigillo vestro distincte et aperte sine dilatione mittatis, et boc Breve, ut his inspectis, u'ter. proced. in Loquela præd. fecund Legem et conf. regni noftri valeant. Tefte, dos.

And if an Affife of Novel diffeifin be brought in the Br. Brief King's Bench, and the Defalledge and plead, that there is 414. Vid: a Writ of a higher nature depending in the Common Pleas 22 H.6.15. for the same Land between the Plaint and Def. then if they Br. Brief be at iffue, whether there be fuch a Writ depending or not, 282. the Def. ought to fue a certiorari out of the Chancery to 40 E.3.32. the Justices of the Common Pleas, to remove and certifie Br. Brief the Record into the Chancery; and upon the same certified, 304he shall have a Writ of Mittimus out of the Chancery to the Justices of the Kings Bench; with which Writ the King shall fend the tenor of the Record which is there into

the Kings Bench. And the Writ of Mittimus shall be

fuch:

Rex dilecto et fideli suo R de W, et sociis suis Just. ad Placita coram nobis tenenda affign. falut'. Cum R P nuper arrainavit quandam Affifam novæ diff. cor. nobis apud West. per Breve nostrum versus B, de ten'tis in A, et duo mesuag', tres carucatas terra, viginti acras prati, cum pertin.in eadem Villa in vifis posiis, idema, H placitand, in Assisa illa allegasset, quod Breve de altiori natura tunc et diu ante pendebat inter partes prædict. coram dilectis et fidelibus nostris W et sociis suis Justiciariis nostris de Banco, et Record. et Processinde coram præfat. Justic. nostris de Banco habita ad Warrantum vocaffet, ut accepim': Nos, attendent. expediens effe et necesse, quod vos super tenor. Record. et Proceff. prædict.coram præfat. Juft. de Banco babitor. certioremini, tenorem illum quem coram nobis in Cancell. nostra venire fecimus vobis mittemus sub pede sigilli, mandant', quod inspectis Record. et Processu præd', ulterins fieri fac. quod de jure et secundum Legem et conf. regni noftri fuerit faciend. Tefte, &c.

Andif a man do recover in an Affife of Novel diffeifin before Juffices of Aflife in the County, and before Execution fued of the damages the Record is removed into the Chancery by Certiorari; he who recovered in the Affile may fue forth a Writ of Mittimus to fend the Record into the King's Bench, commanding them for to proceed, and to

award Execution. And the Writ is fuch:

Rex dilectis & fidel. E & fociis suis Justic. nostris ad Plaeita coram nobis tenend. assign. salutem. Cum I per Recogn. Ass.
de nov. dist, quam W arrain.coram B& sociis suis nuper Inst.
Domini Ed. quondam Regis Angl', avi nostri, ad Ass. &c.
assign. versus R & alios, &c. de Tenementis in T, recuperasset
sissinam suam de uno mes. cum vertin. in D, per consider. cur.
prædist, & dampna sua, quæ ad x li. taxabantur, sicut per Record. & Process. Ass. præd', quæ coram nobis certis de causa
venire secimus, plenius apparet; ac Executio Indicii quoad
dampna recuperanda advac restat faciend', sicut ex parte ipsus
I nobis dat. intelligi: Nos igitur, volent. dictum sudic. execut.
debite demandari, Record. & Process. præd. volent.
sigill.nostri, mandantes, quod vis Record. & Process. sudic.
sudic. prædict. sieri faciatis quod sure & secundum
Legem & cons. regni nostri suerit saciend'. Teste, &c.

And if a man recover Lands by Affise of Novel disseifin C before Justices of Affise, and the Desendant hath a Writ of trarrantia chartae depending in the Common Pleas, the party may sue a Certificati to remove the Record of the Affise in Chancery, and thereupon have a Mittimus of the Record of Affise to the Justices of the Common Pleas, and in the end of the Writ shall be said, ut his inspectis securius procedere valeant in Placito Warrantiae pradict. Secund. Legen,

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And in Affile of Novel differin, if the Def. plead two D or three Recoveries in Affile before other Justices, which Record is in the Treasury,&c.now if the Record be denied, for which he such a certiorari to the Treasurer and Chamberlains of the Exchequer, to certifie the Records at a certain day into the Chancery; if they at the day certifie any Records, but do not certifie that there are other Rolls of the same Justices remaining in the Treasury in the Tower of London, so as that they have not made a full search of the Records; then the King shall send to the Justices of Affile his Writ, reciting the matter, commanding them for to continue that Affile until another day, so as the Defendant be not damnified by failing of the Rec. And the same seemeth to be reasonable.

And if a man be bound in a Statute Staple to pay a certain film of mony at a day certain, after the day the party who hath the Statute may come to the Mayor of the Staple and shew him the same, and pray him to certifie the same into the Chancery; and if the Mayor will not so do, then the party who hath the Obligation may come into the Chancery, and shew the same there, and pray a Certificant to

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the Mayor to certifie the Inrolment of the Statute: and if the Mayor do return, that he hath twice, or oftner, certified the same before that time, as appeareth by the Inrolment made by the Mayor, if there appear no fuch Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may fue forth a new Certiorari to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certifie the Inrolment of the Statute which is before him; and upon the same he may have an Alias, and a Pluries against the Mayor, if he will not certifie the same, and also an Attachment against the Mayor, directed to the Sheriff,&c.

The Writ of Certiorari is an Original Writ, and iffueth vid. 10 EL fometimes out of the Chancery, and fometimes out of the Dyer 274, King's Bench, and lieth where the King would be certified 275. of any Record which is in the Treasury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commissioners, or Bursee before the Escheator; then the King may send that Writ Lambers to any of the faid Courts or Offices, to certifie fuch Record 411. The before him in Banco, or in the Chancery, or before other use at this day is, to a-Justices, where the King pleaseth to have the same certified: ward a Suband he or they to whom or who the Certiorari is directed, pana to the ought to fend the same Record according to the tenor of Commiff. the Writ, and as the Writ doth command him; and if he 37 H.6.30. or they fail so to do, then an Alias shall be awarded, Marie. and afterwards a Pluries, Vel causam nobis significes, and after an Attachment, if a good cause be not returned upon the Pluries wherefore they do not send the Record.

Also the King might by such Writ of Certiorari send for the tenor of the Record, or for the tenor of the tenor of the Record, at his election; and those Writs ought for to be obeyed, and the Records fent, as the Writ commandeth them to do; and the form of some of those Writs here followeth:

Rex dilecto & fideli suo R salut'. Quia quibusdam certis de causis certiorari volumus super Record. & Process. utlag. in I, Com.T, promulgat', & coram vobis & sociis vestris Justic. nostris ad livers. Felonias in Com. prad. audiend. & termin. affign. retornat': Vobis mand', quod tenor. Record. & Proceff. prad', or thus, tenor. Record. & Proceff. utl. pred'. cum omnibus eatangent', nobis in Canc. nostra sub figillo vestro distincte & aperte fine dilatione mittatis, & hoc Breve. Teste,

And

Rex dilectis & fidel. E & fociis suis Justic. nostris ad Placita coram nobis tenend. assign. salutem. Chm I per Recogn. Ass. de nov. dis? quam W arrain.coram B& sociis suis nuper Just. Domini Ed. quondam Regis Angl', avi nostri, ad Ass. &c. assign. versus R & alios, &c. de Tenementis in T, recuperasset sissinam suam de uno mes. cum vertin. in D, per consider. cur. prædis? & dampna sua, quæ ad x li. taxabantur, sicut per Record. & Process. Ass. præd', quæ coram nobis certis de causis venire secimus, plenius apparet; ac Executio Judicii quoad dampna recuperanda advac restat faciend', sicut ex parte ipsus I nobis dat. intelligi: Nos igitur, volent. dictum Judic. execut. debité demandari, Record. & Process. pracesse siguil. nostri, mandantes, quod vis Record. & Processe prædic, alterquoad exec. Judic. prædict. sieri saciatis quod que & sons regni nostri surit saciend'. Teste, &c.

And of a main recover Lands by Affile of Novel disseifin C before Justices of Affile, and the Desendant hath a Writ of twarrantia chartæ depending in the Common Pleas, the party may sue a Certiorari to remove the Record of the Affile in Chancery, and thereupon have a Mittimus of the Record of Affile to the Justices of the Common Pleas, and in the end of the Write shall be said, it his inspectis, securing procedere valeant in Placito Warrantie predict. Securing.

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And in Affile of Novel differin, if the Del. plead two D or three Recoveries in Affile before other Justices, which Record is in the Treasury, see now if the Record be denied, for which he such a Certiorari to the Treasurer and Chamberlains of the Exchequer, to certifie the Records at a certain day into the Chancery; if they at the day certifie any Records, but do not certifie that there are other Rolls of the same Justices remaining in the Treasury in the Tower of London, so as that they have not made a full search of the Records; then the King shall send to the Justices of Affile his Writ, reciting the matter, commanding them for to continue that Affile until another day, so as the Defendant be not damnisted by failing of the Rec. And the same seemeth to be reasonable.

And if a man be bound in a Statute Staple to pay a cerrain film of mony at a day certain, after the day the party who hath the Statute may come to the Mayor of the Staple and shew him the same, and pray him to certife the same into the Chancery; and if the Mayor will not so do, then the party who hath the Obligation may come into the Chancery, and shew the same there, and pray a Certificant to

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the Mayor to certifie the Inrolment of the Statute: and if the Mayor do return, that he hath twice, or oftner, certified the same before that time, as appeareth by the Inrolment made by the Mayor, if there appear no fuch Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may fue forth a new Certificate to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certifie the Inrolment of the Statute which is before him; and upon the same he may have an Alias, and a Pluries against the Mayor, if he will not certifie the same, and also an Attachment against the Mayor, directed to the Sheriff,&c.

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cord. B Also the King might by such Writ of Certiorari send for the tenor of the Record, or for the tenor of the tenor of the Record, at his election; and those Writs ought for to be obeyed, and the Records fent, as the Writ commandeth them to do; and the form of some of those Writs here followeth:

Rex dilecto & fideli fuo R falut'. Quia quibufdam certis de causis certiorari volumus super Record. & Process. utlag. in I, Com. T, promulgat', & coram vobis & fociis vestris fustic. nostris ad divers. Felonias in Com. præd. audiend. & termin. affign. retornat': Vobis mand', quod tenor. Record. & Proceff. prad', or thus, tenor. Record. & Proceff. utl. pred'. cum omnibus ea tangent', nobis in Canc. nostra sub figillo vestro distincte & aperte fine dilatione mittatis, & hoc Breve. Tefte, G.C.

And

And to certifie an Indicament taken before the Justices in C

Eyre, the form is fuch :

Rex,&c. Quia super Presentation. factam coram vobis & fociis vestris Justic. nostris itinerant. in com. Lincoln. de morte A, unde B captus or detentus in prisona nostra de N rectatus eft, or etiam juper Inquisition. inde coram vobis ibid. fatt', quibusdam certis de causis volumus certiorari; Vobis mandamus, and irrotulationem Prafentat. dy Inquisitionis prad. nobis sub figillo vestro distincte & aperte fine dilatione mittatis. & boc Breve. Tefte, o.c.

And there is another form of Writ directed to the Co. D

roners:

43 11.40. o.the Writ was awarded to the Exe-Coroner. erari to the Coroners. Vid. 2 Eliz. Dyer 223. Proffer's Cafe.

Rex Coronator, fuis in Com. Lincoln. falut. Quia quibufdam Br. Cernorari certis de causes certiorari volumes super Recordo & Processu cujufdam Appell', quam W nuper Probator defunct. fecit versus S, de quadam Roberia quam id. W & Bin Com, &c. ad invicem cutors of the fecife dicebantur : Vobis pracipinus, quod Record. & Procest. ejuld. Appell', cum omnibus sea tangentibus, nobis sub sigillis Vid. 36 H. 6. veftris, &c. And that Writ lieth where aman before Justices 24. for Certi- becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver dieth; the King may write unto the Coroner to fend him the Record of the Approvement.

And another form of Certiorari to the Mayor and She- E

riffs of London.

Rex Major. & Vic. Lond. falut'. Quia quedam negotia per Appell', Indi Hamenta & Attachiament. coram vobis in Civitate prad. Lond. nuper intrata nondum terminant', & quadam Inquisitiones in eadem Civitate faite fuerint retornat', quorum quidem negotiorum Inquisitiones, Record. & Process, penes vos resident, ut dicitur, & que omnia per dilectos & fideles nostros B,C & D, Juftic. noftros ad diverfus tranger. in Civitate prad. fact. audiend. & terminand. affign', expediri volumus, & finalit. terminari: Vobis mandamus quod pred. Record. & Proceff. cum onnibus ea tangent. pr.ef. Justic. sub sigillis, coc.

And if the King by virtue of any Writ of Certiorari re- F move any Record before any of the Justices, he may afterwards fend for that Record, and remove the same before himself, or other Justices, at his election; and then the Writ

Rex, 5c. Quia quibusdam certis de causis certiorari volumus Super Record. & Proseff. cujuidam Inquisitionis capt. coram dilectis & fidelibus notris W & P, Justic. nofris ad gaolam noftram de N affign. deliberand', pro morte E, unde C pro morte pradict. rectatus fuit, ut dic', que quidem Record. & Proceff.

coram

coram vobis certis de causis venire fecimus, que penes vos resident, ut dic': Vobis mandamus, quod Record. & Proceff. prad. cum comnibus ea tangent nobis sub sigillis vestris distinfie, oc.

And when the King would be certified of an Outlawry in the County, then the Certiorari shall be as well to the Sheriff as to the Coroners of the County to certifie the fame. But if a man be condemned in the Kings Bench, and afterwards Outlawed for the Kings Fine upon his condemnation; if he will fue forth a Pardon of the Outlawry, he ought to have a Certiorari out of the Chancery, to certifie the Record of the condemnation, which shall be fuch:

Rex dilecto & fideli suo I, &c. Capitali Justic. suo, falut'. cum E de quadam transg. F vi & armis fasta coram nobis convictus, & pro eo quod non venit coram nobis ad fatisfaciend. nobis de redemptione sua que ad nos pertinet in hac parte, & præfat.F de dampnis sibi in hac parte adjudicat', in Exigend. posit. fuiffet ad utlagand', et ea occasione postmodum utlagat', que quidem utl. coram nobis jam est retornata, ut accepimus, ac idem E nobis supplicaverit, ut cum ipse præf. F de dampnis suis præd. jam satisfecerit, velimus ei utlag. præd. gratiose pardonar': Nos ea de causa certior. volentes super Record. & Process. utlag. præd', et fi idem E prefato F de dampnis præd. fatisfecerit (ut dictum eft) necne, Vobis mandamus, quod nos super premiff. sub figillo vestro distincte & aperte, &c. reddatis sertiores.

And if a man be indicted before Justices of Gaol-delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he shall be troubled by reason of the same Indictment, he may sue forth a certiorari to remove that Record and Process of the Inquisition, &c. into the

Chancery,&c.

B And if a man do recover Debt or Damages before Justices 14 H.7.15. of Over and Terminer, and hath not Execution, he may re 15 H.7.5. move the Record and the Process into the Kings Bench, 36 H.6.23. and there sue Execution, and have a Scire facias upon that 39 H 6.34.

Record.&c.

And if a man do recover Damages in an Action of Trefpass before Justices of Over and Terminer, and hath the party in Execution by reason of the judgment; if the party in Execution dieth in prison, he who recovered may sue a 34 H.6.47 Certificari to the Justices to remove the Record into the 4 E 4.39. Kings Bench, that the Justices there may award Execution 33 H.6.48. as the Law requireth in fuch case. And I think in that Dainy. case, that the party shall have Execution by Elegit, or by 47 E. 2. Scirefacias; for it seemeth not to be reasonable, that the Bas at 41.

death of him who dieth in prison should be a satisfaction to

the party. Tamen quere, for the same is a doubt.

If a man be arraigned of Murther, and found guilty se defendendo, for which he is bailed, or committed to prilon, he may have a Certiorari to remove the Record into the Chancery, that he may sue forth a pardon thereupon ac-

cording to the course of the Law,&c.

If aman recover damages in Trespass in the Kings Bench, D and hath the Desendants Lands in Execution by Elegit, and then he who recovereth is difficiled by the other, for which he bringeth an Assis before the Justices of Assis; he who bringeth the Assis bench, to certifie the Record and the proceedings to judgment given in the Kings Bench, and of the Execution there; and the Plaintiss may have the Record in Chancery exemplified under the Great Seal, if need be, to the Justices of Assis:

And if a man recover by Affife of Novel diffeifin, and the E party will fue an Attaint in the Common Pleas, or in the Kings Bench, the ought to fue a Certiorari to the Juffices of Affife, to remove the Record into the Kings Bench, or into the Chancery, &c. that he might fend the fame before the

Justices before whom the Attaint is sued,&c.

And it appeareth by the Register in the Title [Certiorari] F that if False judgment be given before the Steward and Marshal of the Kings House, upon a Plaint there sued, that the party may sue an Attaint by Writ before the Steward and Marshal to attaint that Jury,&c. and that the King may send a Certiorari to certifie the Record into the Chancery, which shall be directed to the Steward and Marshal of the Kings house; but the Record shall be certified under the Seal of the Steward only, as appeareth by the words of the Writ, &c.

There is another Writ of Certiforari directed to the Trea-G furer and Earons of the Exchequer, to certifie the King of the debt which I oweth unto him, and of the debt which the Ancestor of the said I owed the King, & which are clear debts, and to certifie the same without delay under the Exchequer Seal, and not into the Chancery, nor into the

Kings Bench.

There is another Certiorari directed to the Justices of H Gaoi-delivery, to certifie the Record and proceedings upon an Indictment of Murther, and Acquital thereupon into the Chancery, &c.

There is another Certificari to the Justices of Peace, to i

certifie into the Chancery the tenor of the Records and Process of Outlawry of several persons returned before them.

There is another Writ of Certiorari directed to the Steward and Marshal of the Kings house, to certifie under the Seal of the Steward into the Kings Bench an Indictment taken before the Steward and Marshal, which the King would have to be determined only before him in the Kings Bench.

There is another Writ of Certiorari to the Mayor and Sheriffs of York, to certifie the renor of the Record and proceedings in an Affife of Fresh force sued before them in the same City without Writ, and to certifie the renor of the

Record and proceedings in the Chancery.

There is another Writ of Certiorari to the Bishop of Oxford, to certifie into the Chancery how many persons were admitted, instituted and inducted into such a Church, fince the first year of King E.4. until this time, and at whose Presentation, and by what Title, and in what manner.

N . There is another Writ of Certiorari to the Custos brevium, to certifie the King in the Chancery the tenor of the Original and judicial Writs, and the Warrants of Attorney which are in his cuftody concerning fuch an Action or

Suit.

And another Writ directed to the Treasurer and Chamberlains of the Exchequer, to certifie the King in the Chancery the Record and proceedings of a Writ of Quo warranto, fued by the Kings Ancestor, King Edward the [247] first, against the Abbot of westminster, for certain Liberties claimed by the faid Abbot,&c,

And another Writ of Certiorari to the Commissioners, of Sewers, to certifie the King in the Chancery at a certain day all the Presentments before them made against such a

B person,&c. And a Writ of Certiorari directed to the Chief Justice of the Common Pleas, to certifie the tenor of a Record and proceedings of Utlagery against such a one in London, remaining in Middlesex before the Justices of the Common

Pleas, and to certifie the fame into the Chancery.

And if a Baron, who is a Peer of the Realm, be fued in the Common Pleas, and Process be awarded against him by Capias or Exigent, then he may fue a Certimari in the Chancery, directed to the Inflices of the Common Pleas or Kings Bench, testifying that he is a reer of the Realin, commanding them to award such Process against him as Rr 2

they ought to do against a Peer of the Realm: and the Writ is fuch:

Rex Justiciar. suis de Banco salutem. Mandamus vobis, quod G T mil. coram vobis ad fectam alicujus per Actionem perfonalem implacitatus existat, talem Processum, & non alium, vers. ipsum in Action. prædict. fieri faciat', qual. versus Dominos, Magnates, Comites, seu Barones regni nostri Angl. qui ad Parliamenta nostra de summonitione venire debent, aut eorum aliquem, fecundum Legem & conf. regni nostri Angl. fuer. faciend', quia prad. GT unum Baron. regni nostri prad. ad Parliamenta nostra de summ. Regia venient. record: & hoc vobis mandam.

& aliis quor. intereft innotescimus. Tefte, &c.

And if a man recover damages and costs in an Assise of D Novel diffeisin, he may sue a Certiorari to remove the Record into the Chancery, directed to the Justices of the Affife, to the intent that the King may fend the fame to any of his Courts, that he who recovereth may fue Execurion of the damages recovered; and upon that Record fent into the Kings Bench, he shall send that Record into the Common Pleas by Writ of Mittimus directed to the Justices there, that they do as they ought for to do according to the Law, to make the damages to be levied. There is another form of Certiorari by these words:

Rex Vic. orc. Volentes certis de causis certior. super tenorem Record. et Process. utlvg. in W, de B de Com. N Husbandman, in eodem Com', or thus, in Hustingo nostro London. promulgat', & coram Justiciar. ipsius Regis de Banco ret', quod quidem Record. et Processum idem Rex coram eo cert.de causis venire fecit, ut die, ac fi idem W fe redd. prifone Marifcalfie ipfius Regis cor. to occasione pradict', necne: Ideo tenor Record. & Process. utlagar. pr.edict', necnon Certificatio redditionis illius eidem Regi in Cancell. Suam, Sub sigillis I F, capital. Justic. Sui ad Placita coram ipfo Rege tenend', distincte & aperte fine dilatione mittantur cum hac Billa. Tefte ipfo Rege apud Westm. xii die Maii, an.regnifui 30.

And by that appeareth, although the Record be remaining in Banco, yet the King may fend to remove it into the

Chancery.

And if a man be arraigned of Murther, and it is found F that he killed the party se defendendo, he ought for to sue a Certiorari to remove the Record into the Chancery, and upon the removal thereof to have his Pardon; and the form of the Pardon doth appear in the Register, fol. 287, and 288.

And

And if a man be attainted in Affife of Novel deffeifin before the Justices of Affise, of a Diffeifin with force, and be afterwards Outlawed for the Kings Fine; if he will have a Pardon of the Utlagery, he ought for to have a certiorari directed to the Justices of Affise, to certifie the King in his Chancery the tenor of the Record of the Affife, and also another Writ to the Justices, to certifie the King in his Chancery whether the Defendant in the Affife hath yielded himself to prison, and hath satisfied the party his damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry, and the form of the Charter of pardon appeareth in the Register, 288.

And if a man be condemned in the Common Pleas in Debt and Outlawry upon the fame; then before he shall have his pardon, he ought for to yield himself to the Prison of the Fleet, and satisfie the party, and the Record of his Condemnation and of the fatisfaction ought to be certified by Certiorari unto the King in his Chancery; and thercupon he shall have his pardon: and that is by the Statute of 5 E.

3. cap.12.

And if a man be Outlayed severally at the Suit of three feveral persons in several Actions in which he was condemned, he ought to fue a certiorari to remove the tenor of those Records and Processinto the Chancery; and also to have a Certiorari to the Justices of the Common Pleas, if the Suit be there, to certifie the King in Chancery whether he hath yielded himself to the prison of the Fleet, and hath satisfied the parties: and when the Chief Justice hath certified the same into the Chancery, then he shall have his pardon for the Outlawries, and not before: and the form of the Pardon appears in the Register, 288.

There is another Certiofari to the Escheator, to certifie the manner and cause of taking of Lands into the Kings hands after the death of one; and the Writ is such:

Rex Escheatori, &c. falut'. Cum quibusdam cert. de causis certior. volumus super mod. & caption. terr. & tenementor. que fuer. I defuncti in B in Ball. tha per te in manum noftram, at dicit': Tibi pracipim', quod nos in Canc. nostra super mod. & causa suprad. sub sigillo tuo distinct. & apert, sine dilati-one redd. certior, boc Breve nobis remittentes. Teste,

But note, that it is enacted by Statute, that if the Escheator find any Office of any Lands or Tenements for the King, [248] that he ought for to return the Office into the Chancery,

or into the Exchequer, within a month after the finding thereof, upon pain of 20 1. payable to the King, and to him that will fue for the same : and that Statute was made A.8 H.6.cap. 16.

There is another certiorari directed to the Escheator, to A

certifie the King in Chancery, at his peril, the value of the Knights Fees and of the Advowsons which I had, who is dead, who held of the King the day of his death in Capite;

and the Writ is thus:

Rex Escheatori, doc. Volent. certis de causis certior. Super vero valore Feod. Milit. & Advoc. Ecclesiar. que fuer. I defunct, qui de nobis tenuit in capit. in Ball. tua die quo obiit, & que occasion. mortis ejusd. I capt. sunt in manum nostram; Tibi præcipimus, quod Feod. illa & Advocat. præd. per facrament', &c. diligent. extendi facias, quantum viz. valeant per an. in omnibus exit. juxta valor.corund, & Extentam illam distincte & aperte fact. nobis sub sigillo tuo & sigillis eorum per quos faet. fuer. fine dilatione mitt', & hos Freve. Tefte, &c.

And if a Lunatick or a Mad-man doth kill a man, or if B

a man doth kill a man by misfortune, or if an Infant of 8 years old doth kill a man; if they will fue a Pardon for the same, the use is, to sue a Certiorari to remove the tenor of the Record and Process into the Chancery, and thereupon to have a Pardon:and in the Regisfer do appear several forms of fuch certioraries to remove fuch Records, which a man may fee there more fully, and therefore they are not here mentioned.

# Writ of Forcible Entry upon the Statute of 8 H.6.

The Writ upon the Statute of 8 H. 6. of Forcible Entry C lies, where a man is diffeifed or put out of his Lands or Tenements with force, whereof he is feifed as of an GHalon: Estate of Freehold in Fee tail, or in Fee, or for life; he may Rechards if he be differed or put out of his Lands or Tenements peaceably, and afterwards the Diffeifor or he who oufleth comenh the whim doth keep and detain the Lands and Tenements with force, then he who is so put out may sue that Writ if he will, and in that Writ he shall recover his damages and his costs treble for what he is found damnified by the Jury, and what he hath expended in that Suit.

If a man enter into any Lands and Tenements, and dif- D feifeth another with force, and keepeth the Lands and Tenements

nements and detaineth them with force; then he who is oufted and diffeifed may have that Writ, although the words of the Statute are in the disjunctive, scil. Where a man is Inst & disseised with force, or where a man doth disseise one ita peaceably, and afterwards doth keep the Lands with force; because the intent of the makers of the Statute was to punish such force, whether it were upon the Entry and Diffeisin, or upon the keeping and detaining of the Lands,

And note, that none can have or maintain that Action but he who hath a Freehold in the Lands or Tenements at Hal the least: for Tenant for years cannot maintain the Action, goe primi because the words of the Writ are, expulit, & dissession of and Tenant for years cannot be diffeifed,&c. And the form / of the Writ is such:

Rex Vic. salutem. Si A fecerit, &c. tunc pone B, &c. ad respond. tam nobis quam præfat. A, quare cum in Statuto in Parliamento apud Westm. anno regni Regis H. nuper Regis Angliæ 6. progenitor. nostri 8. tento, edit. inter catera contineat', Quod si aliqua persona de aliquibus terris seu tenementis manu forti expulsa sit & diffeis', vel pacifice expellat', o postea manu forti extrateneat', vel aliquod Feoffament.vel Discontinutio inde post talem ingress. pro jure possessor. defraudando & tollend. aliquo modo fiat, habeat pars in hac parte gravata versus talem Diff. Assisam novæ diff. vel Breve de Transgr'; & fi pars gravata per Afficam vel per Action. Transgreff. recuperet, & per Veredict. vel alio modo per debit. Legis formam inveniat, quod pars Def. in terr. & tenement. vi ingreff. fuerit, vel ea post ingressum suum per vim tenuerit, recuper. Querens dampna sua ad triplum versus Def, & ulter. Finem & redemption. nobis faciat : præd. B præf. A de Liber. tenemento suo in B manu forti expulit & diffeifivit, & cum fic expuls. & diffeif. extratenet de eod', in nostri contemptum, & ipsius A dampn. non modicum & gravam', ac contra form. Statuti prædict', & contra pacem nostram. Et habeas ibi nomina Plegior', & hoc Breve. Tefte, O.c.

And the Process in that Writ is Attachment and Distress,

and Process of Utlagery, &c.

If a man entreth with force in Lands or Tenements into 15 H.7.17, which he hath Title and right of Entry, and put the Tenant 18. of the Freehold out of those Lands or Tenements; now he who is so put out with force shall not maintain an Action of Forcible entry against him who had title or right of Entry, because that that Entry is not any Diffeisin of him: but he may indict him for this entring by force, and

Writ of Forcible Entry upon the Statute.

23 H.S.f.s.

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by this Indicament he shall be restored to his possession again; and that is by the Stat. of 8 H.6. c.9. And in this A- A Lation of Forcible entry the Plaintiff shall recover treble damages, as well for the occupying of the Lands, as for the first Entry therein. And a man may have a Forcible B entry of a Rent, as well as of Lands.

And if a man entreth and diffeifeth another with force, C and afterward the Diffeisee re-entreth again; yet the Diffeisee may bring his Action of Forcible entry, and recover his treble damages, although he be seised of the Land at the time of the Action brought: but if a man continueth three years in peaceable possession, without interruption, then he may hold the Lands with force, and shall not be punished for that force; and that by the same Statute.

And in the Writ of Forcible entry, the Defendant may D plead Not guilty, and it shall be a good Plea; but if the Defendant doth plead matter in Bar, yet he ought in the end of his Plea in Bar to traverse the Entry with force which is alledged, as to fay, Absque hos that he didenter with force, &c. but yet the Demandant or Plaintiff ought to answer to the special matter alledged in the Bar, without

answering to the Traverse with force,&c.

And if the special matter alledged in the Bar be found for the Defendant, he shall be excused, and the force shall not be enquired of; and if it be found with the Plaintiff, and against the Defendant, the Defendant shall be attainted of the force, and shall pay treble damages and costs, without enquiry of the force: and the fame is the usage at this day. And one Joynt-tenant, or Tenant in common, may maintain this Action against his Companion, if he be put out with force,&c.

And if a man do enter with force, and doth detain with E force any Lands or Tenements; the party may have his Action upon the Statute of Northampton, made An. 2 E. 3.

c, 3. and the Writ shall be such :

Rex Vic', &c. Quia datum est nobis intelligi, quod quam- F plur. malefactores & pacis nostræ perturbatores in Conventiculis congregati, armati, & modo guerrino arraiati, apud C acceder', & clauf. & domos quorund. liegiorum nostrorum ibid. per vim & potentiam armat. intrar', & res, redditus & proventus, ac alia bona sua que cunque de quibuscunque possessionibus suis ibidem provenient', capere consent', & asportare intendunt, & ad hoc parant, in nostri contempt', ac quorundam de populo nostro ibid. terrorem & commotionem manifestam, ac contra form. Stat. apud Northampton. de armis

\$7 H.7,17.

contra

contra pacem Domini Ed. nuper Regis Anglia tertii , progenit. nostri, non portand.editi, & contra pacem nostram : Nos, Statutum prædia' inviolabilit. observar', & idem infringentes juxta vim & effectum ejufdem Stat. caftigari facere volentes & puniri, tibi præcipimus, quod apud Villam de C, & alibi in Com. tuo ubi necesse fuerit, publice proclam, & ex parte nostra firmit. inhiberi fac', ne quis, cujuscunque Stat. sive conditionis fuerit, ibidem armatus contra pacem nostram ac form. Stat. brad. accedat, nec armatam potent. nec quicquam aliud ibidem feu alibi fac', per quod Pax nostra seu Stat. præd. lædi, vel popul. noster terreri, turbari, aut indebite gravari poterit quovis modo. sub poena amissioniss armorum suorum, & incarceration, corporum suorum ad voluntatem nostram, prout in Stat. pradiet. plenius continetur. Et omnes illos quos post & contra Proclamation. & Inhibitionem prad. inveneris contraria facientes, vel per inquisitionem per te modo & for nadebitis capiend inveneris fecisse. una cum armis & armaturis suis secum invent', arrestar. & capi, & corpora ip forum arrestator.in prisona nostra, quousque aliud à nobis pro deliberatione sua habueritis in mandat', falvo custodir', ac arma & armaturas præd. appreciari, & nobis inde respond', fac': nos vero in Cancello nostra sub sigillo tuo de nominibus arrestator.præd',ac de armis & armaturis suis, & que & cuinfmodifuerint, & de pretio vel de vero valore eorund, ac de toto factotuo in bac parte, redd. diftinct. & aperte fine dilation. certiores, hoc breve nobis remitt'. Tefte, &c.

## Writ of Mainprise.

The Writ of Mainprise lieth properly, where a man is whoan = taken for suspicion of Felony, or indicted of Felony, for the which thing by the Law he is bailable, and he offereth sufficient Sureties unto the Sheriff or others who have authority to bail him, and he or they do resuse for to let him Chay no they to bail; then he who is so kept in prison may sue forth such on ye shall of Writ:

Rex Vic', &c. Ex parte R, capti & detenti in Gaola nostra Bail and man Glouc. pro quodam Latrocinio ejusdem equi apud S, ut dicitur, smile facto, unde coram te per quand. Inquisitionem ex officio tuo captam indictatus est, ut dicit', nobis est ostensum, quod licèt ipse tibi frequent. obtulerit suffic. Manucapt', qui eum manucaperent, juxta formam Stat. apud Westen. dudum editi, in quo continetur, quod de hujusmodi Latrociniis coram Vic. vel Ballivis per Inquisitiones ex officiis suis captas indictati replegiabiles sunt, dum tamen bonæ samæ sint; tu tamen Manucaptores

eaptores illos à præfat. R recipere, & ipsum per Manucaptionem bujusmodi a Gaola prædict. bucusque deliberare distulisti, & adbuc differs, in ipsius R di pendin non modicum & gravamen, & vita sue periculum manifestum, & cont. form. Stat. præd': G quia nolumus quod idem R in prison. præd. contra formam Statuti præd. diutius detineatur , Tibi præcipimus, quad fi [250] idem R bonæ famæ sit, & per Inquisit. coram te ex officio tho captam de Latrocinio præd. indictatus fuerit, ut præd. eft, & pro eodem Latrocinio, & non alia occasione, in prisona prædict. detineatur, & invenerit tibi suffic. Manucaptores, qui eum manucapere voluerint habere coram Just. nostres ad Gaolam nostram prædict.deliberand. affignatis vel affignandis, in proxim. adventu eorund. pro Gaola illa deliberand', ad stand: recto de Latrocinio prædict. secundum Legem & consuetud. regni nostri Anglia, tunc itsum R à prison. prædict.interim deliberari fac. per Manucaption. Supradict', juxta form. Stat. prædicti; & babeas ibi nomina Manucaptor. illorum, & hoc Breve. Tefte, Oc.

But note, that it is outled by the Statute made An. 28 E. 3.c.4. that the Sheriff shall not take Indictments by Writs A or Commission directed unto them. And see the Statute of R

West. 1. cap. 15. for those who shall be bailed.

And if a man be indicted of Felony before the Bailies of the Hundred, and put into the Gaol for the fame, if he offer fufficient Sureties to the Bailies, and they will not bail him, then he who is imprisoned may have such a Writ unto

the Sheriff, thus:

Rex Vic. &c. Ex parte I nobis est ostens. ut cùm ipse per quosd. emulos suos de Latrocinio e just bovis Ric', &c. apud R sacto, ut dic', coram Ball. E. de B, de Hund. suo de P, per Inquisitionem ex ossicio eorund. Ball. captam, indictatus, & ea occasione captus, & in prisona nostra de D detentus existat; & licèt idem I frequent. sibi obtulerit sussicion. Manucaptores, qui eum manucaperent, juxta formam Statuti apud Westm. dudum editi, in quo continetur, &c. ut suprà. Tibi praccipimus, quod si idem! bona sama sit, & per inquisitionem coram eissa. Ballivis ex ossicio suo captam de Latrocinio prad. indictatus sucrit, ut pradictum est, & pro eod. Latrocinio, &c.ut suprà, &c.

And there is another Writ for a man who is taken for suspicion of Felony, and kept in prison: and another Writ for him who is arrested and kept in prison for petty Larceny, &c. But this clause shall then be put in the Writ; viz. Si de aliis Latrociniis prins restati non fuerint: but this clause, dum tamen bona same sint shall not be put in that Writ, where

it is fued for him who is taken for petty Larceny.

And

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And if a man who is of good fame be appelled by an Approver, for which cause he is arrested and kept in prison; then he may sue a Writ to the Sheriff, to let him be bailed upon good Sureties.

And so if a man be appelled by an Approver, and be taken and kept in prison, and afterward the Approver dieth; he may tue a Writ to the Sheriff to set him at liberty upon sufficient Bail, if he be not a notorious Felon, although he

be not a man of good fame.

And if a man be indicted as acceffary to a Murther, as by his affent and procurement, or receit, &c. or of aiding or counfelling, &c. and be taken for the fame, he may fue a Writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good fame: but the Statute of Well. cap. 15. doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Commandment, Abetment, or Consent, &c.

And if a man be taken by the King's Commission, and kept in prison for Felony, or evil doing, he may by his friends put in Sureties in the Chancery, that he will appear before the Justices,&c. and be of good behaviour, &c. and that body for body; and thereupon he shall have a Writ out of the Chancery unto the Sheriff, or unto the Constable of the Castle where he is imprisoned, to set him at liberty, if he be imprisoned for that cause, and for no other.

And if a man be indicted before Justices of Peace of Trespass, and imprisoned for the same by process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at liberty: but the Justices of Peace may take Bail of him, and set him at liberty, if they so please.

If a man be indicted of Trespass before the Justices of the Peace, and put in prison therefore, he may sue a Certiorari to remove the Indictment into the Kings Bench, directed to the Justices of Peace, and a Habeas Corpus to the Gaoler, that he bring the parry at his costs before the King in his

Bench fuch a day,&c.

And if a man be indicted of Forestalling, and put in prison for the same, he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespass, & then to set him at liberty.

K And if a man such a Writ of Error upon false judgment given against him in any City or Borough, where he is con-

demned

eaptores illos à præfat. R recipere, & ipsum per Manucaptionem bujusmodi a Gaola prædict. bucusque deliberare distulisti, & adhuc differs, in ipfins R di pendin non modicum & gravamen, & vita sue periculum manifestum, & cont. form. Stat. præd': o quia nolumus quod idem R in prison. præd. contra formam Statuti præd. diutius detineatur, Tibi præcipimus, quad si [250] idem R bonæ samæ sit, & per Inquisit. coram te ex officio tho captam de Latrocinio præd. indictatus fuerit, ut præd. eft, & pro eodem Latrocinio, & non alia occasione, in prisona prædict. detineatur, & invenerit tibi suffic. Manucaptores, qui eum manucapere voluerint habere coram Just. nostres ad Gaolam nostram prædict.deliberand. assignatis vel assignandis, in proxim. adventu eorund. pro Gaola illa deliberand, ad stand: recto de Latrocinio prædict. secundum Legem & consuetud. regni nostri Anglia, tunc itsum R à prison. prædict.interim deliberari fac. per Manucaption. Supradict', juxta form. Stat. prædicti; & babeas ibi nomina Manucaptor. illorum, & boc Breve. Tefte, Oc.

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West. 1. cap. 15. for those who shall be bailed.

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the Sheriff, thus:

Rex Vic. &c. Ex parte I nobis est ostens. ut cùm ipse per quosal amulos suos de Latrocinio e just bovis Ric, &c. apud R satto, ut dic, coram Ball. E. de B, de Hund. suo de P, per inquisitionem ex ossicio eorund. Ball. captam, indictatus, & ea occasione captus, & in prisona nostra de D detentus existat; & licèt idem I frequent. sibi obtuierit sussicion. Manucaptores, qui eum manucaperent, juxta sormam Statuti apud Westm. dudum editi, in quo continetur, &c. ut supra. Tibi pracipimus, quod si idem! bona sama sit, & per inquisitionem coram eista. Ballivis ex ossicio suo captam de Latrocinio prad. indictatus suerit, ut pradictum est, & pro eod. Latrocinio, &c.ut supra, &cc.

And there is another Writ for a man who is taken for sufficion of Felony, and kept in prison: and another Writ for him who is arrested and kept in prison for petty Larceny, &c. But this clause shall then be put in the Writ; viz. Si de aliis Latrociniis priss restati non successibut this clause, dum tamen bona same sint shall not be put in that Writ, where

it is fued for him who is taken for petty Larceny.

And

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And so if a man be appelled by an Approver, and be taken and kept in prison, and afterward the Approver dieth; he may tue a Writ to the Sheriff to set him at liberty upon sufficient Bail, if he be not a notorious Felon, although he

be not a man of good fame.

hand if a man be indicted as accessary to a Murther, as by his assent and procurement, or receit, &c. or of aiding or counsessing, &c. and be taken for the same, he may sue a Writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good same: but the Statute of West. cap. 15. doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Com-

mandment, Abetment, or Consent, &c.

And if a man be taken by the King's Commission, and kept in prison for Felony, or evil doing, he may by his friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good behaviour, &c. and that body for body; and thereupon he shall have a Writ out of the Chancery unto the Sheriff, or unto the Constable of the Castle where he is imprisoned, to set him at liberty, if he be imprisoned for that cause, and for no other.

And if a man be indicted before Justices of Peace of Trespass, and imprisoned for the same by process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at liberty: but the Justices of Peace may take Bail of him, and set him at liberty, if they so please.

H If a man be indicted of Trespass before the Justices of the Peace, and put in prison therefore, he may sue a certiorari to remove the Indictment into the Kings Bench, directed to the Justices of Peace, and a Habeas Corpus to the Gaoler, that he bring the party at his costs before the King in his

Bench such a day,&c.

I And if a man be indicted of Forestalling, and put in prison for the same, he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespals, & then to set him at liberty.

K And if a man such a Writ of Error upon false judgment given against him in any City or Borough, where he is con-

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demned, and kept in Prison; he may sue a Writ out of the Chancery, directed to the Mayor or Bailies of the City or Borough, to take Surety of him to answer what shall be due to the King and to the party, if the Judgment be affirmed; commanding them for to set him at liberty.

And so if a man sucth an Appeal of Maihem against ano-L ther, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the intent that he may not sue his Appeal; he may have a Writ out of the Chancery to the Bailies or Mayor, that he take Sureties of him to answer to the party there, and that they set him at liberty: and all those Writs appear in the Register.

And if a man be appelled of Robbery, he may fue a A Writ out of the Chancery to the Sheriff, that he take Surcties of him to appear before the Juffices, &c. and that he fet him at liberty; and if he have not arrefted him, that he do not arreft him, if the party offers to find fuch Sure-

ties to the Sheriff,&c.

And if a man be fued in Debt or Trefpass, and be arrest- B ed by Capias or Exigent, and kept in prison, he may sue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a day,&c.and that he fet him at liberty,&c. But now by the Statute made Anno 23 H. 6. every Sheriff is bounden to let to Bail every one in his custody, who is arrested by Writ, Bill, or Warrant, in any Action Personal, or upon Indictment of Trespass, if they offer reasonable Sureties to appear at the day, &c. in such places where the Writ, Bill,&c. is returnable,&c. But persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or persons who are committed to Prison by the commandment of any Justice, and persons wandring who refuse to serve, who remain in the custody of the Sheriff, all those persons are excepted, for the Sheriff ought not to let fuch persons to Bail.

If a man be condemned in Trespass before Justices of C the Peace, and be arrested and put into prison in the custody of the Sheriff, he may sue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at liberty: and also he may have a Writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at liberty: or if the parry do find Sureties in the Chancery to appear and stand right in Law, then he shall have a Writ directed to the Justices of Peace, or unto

the Sheriff, to fet him at liberty.

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D If a man be bounden in a Statute-Merchant payable at a day certain, and at the day he pay part of the mony, and hath a Releafe from the Conuse, of the residue, if the Conuse sue Execution, and arrest the party who hath the Release, then the Recognisor may sue in Chancery, &c. by his friends, and find Sureties, body for body, that he shall appear such a day in the Kings Bench, and pay the mony there, if he cannot otherwise be discharged; and thereupon he shall have a Writ to the Sheriss, reciting the whole matter, and how he hath sound Sureties in the Chancery, as is aforesaid, commanding him for to set him at liberty; and thereupon the Sheriss ought for to set him at liberty; and if he will not so do, he shall have an Alias, and a Pluries, and an Attachment against the Sheriss, &c.

And if a man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a Habeas Corpus or a Certiorari in Chancery; he shall not be bailed, but shall be remanded to prison, there to remain according to the Law, until he hath satisfied the party Plaintiff, &c.

An.2 H.5.cap.2.

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And two Justices of the Peace, whereof one is of the Quorum, may let men suspected of Felony, or other persons who are basilable, to Bail, until the next General Sessions or Gaol-delivery: but the Justices of Peace are bound there to certifie at the next General Sessions, or Gaol-delivery that Recognisance unto the Justices, &c. upon pain of forseiture of 10 l. and that is by the Statute of 3 H. 7. cab.2.

And he who is acquitted of Murther within the year at the Kings fuit, shall not be released out of prison until he find Sureties to appear at any time the Justices will require him until the end of the year, &c because the party may sue his Appeal after against him within the year,

&c.

C

H And what persons are bailable, and what not, appeareth

by the Statute of west.1. c.15.

And the Juftices of Gaol-delivery may punish those who let men to Bail, who are not bailable, by the Statute de

Finibus, cap, 3.

And An. 4 E. 3. cap. 2. The Marshal of the Kings house cannot let those to Bail who are indicted or appelled of Felony, who are committed to them, &c. but the Justices of the Kings Bench may punish them, &c. And Anno 5 E. 3. cap. 8. they cannot let to bail those who render themselves

at the Exigent in Felony, and are committed to the Marshal, nor by Baily nor Baston; and if they do, they shall be imprijoned for half a year, and fined at the Kings pleasure.

## Writ of Diem clausit extremum:

He Writ of Diem clausit extremum properly lieth, where K the Kings Tenant, who holdeth of him in capite, as of his Crown, by Knights service, or in Socage, dieth seised, his Heir within age, or of full age; then that Writ ought to iffue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full age, he ought for to fue Livery of his Lands out of the Kings hands: and

Rex dilect. sibi W de K, Escheatori suo in Com. Devon',

the Writ is fuch :

falut .. Quia W de S, qui de nobis tenuit in capite, Diem clausit extremum, ut accepimus; Tibi pracipimus, quod omnia terras O tenementa de quibus idem W fuit seisitus in dominico suo ut de feodo in Balliva tua die quo obiit fine dilatione cap. in manum noftram , & ea salvo custodiri fac', donec aliud' inde præceperimus, & per sacramentum proborum & legal. hominum de Balliva tua, per quos rei veritas melius sciri poterit, diligent. inquiras, quantum terra & tenementorum idem W tenuit de nobis in capite, tam in dominico, quam in servitiis, in Bolliva tua die quo obiit, & quantum de aliis, & per quod fervic', & quant. terræ & tenementa illa valent per annum in

aperte fact. nobis in Cancell. nostra sub sigillo tuo, & sigillis eor. per quos fact. fuerit, fine dilatione mittas, & boc Breve.

Stamf. 13. Plom. Com. 204.

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Tefte, oc. And if the King hath a Ward, and afterwards one who A holdeth of the faid Ward his Lands by Knights service dieth, his heir within age, or of full age; then a Diem clausit

omnibus exitibus, & quo die idem W obiit, & quis propinquior

bares ejus sit, & cujus atatis: & Inquisic. inde distincte &

extremum after his death shall issue in this form:

Rex dilect, &c. Quia I de S, qui de hæred. W de O defuncti, qui de nobis tenuit in capite, infra atatem & in cuftod. nostra existent', tennit per servic. militare, Diem clausit extremum, ut accepimus; Tibi pracipimus, quod omnia terras & tenementa, Oc. & per facramentum, Oc. quantum terrarum & tenementorum idem I ten. de hæred.præd', & quis propinguior hæres ejus fit, &c. ut suprá.

And if the Heir dieth being in the custody of the King, B then shall issue another Writ of Diem clausit extremum in

this form:

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Rex, &c. Quia R de H, filius & bæres I de H defuncti, qui de nobis tenuit in capite, nuper dum infra ætatem & in cuftod. nostra fuit Diem clausit extremum, ut accepimus; Tibi præcipimus, quod per sacramentum, &c. inquiras, quæ terr. & quæ ternementa per mortem præd. I, do ratione minoris ætatis bæredis prædicī. I, ad manus nostra sævener, & sic in manu nostra existunt, & quantum indè de nobis tenent in capite, & quantum de alis. & per auod servitium. & quantum. &c.

de aliis, & per quod servitium, & quantum, & c.

And if the Kings Tenant dieth who holdeth by Knights fervice, and his wife be endowed, and the King hath the Wardship of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the Kings hands; then a Diem clausit extremum shall

be fued in this manner:

Rex dilecto sibi N de:B, Majori Civit. sue London', & Escheatori suo in eadem Civitate, salut'. Quia E, que suit uxor I de B dudum desuncti, que quasdam terras & quedam tenementa de nobistenuit in dotem de hereditat. predict. I quonda viri sui, Diem clausit extremum, ut accepimus, Tibi precipimus, quod omnia terras & tenementa que eadem E sic tenuit in dotem de hereditat. pred' in Ballivatua, & c. per sacrament', & c. diligent. inquiras, quas terras & que tenementa eadem E sic tenuit in dotem de hered. pred. in Ballivatua die quo obiet, & quantum indè de nobistenet in capite, & quantum de aliu, & per quod servic', & c.

Otherwise after the death of Tenant for life of Lands of

which the King hath the Reversion in Ward:

Quia A, qui quasdam terras & quedam tenementa de hered. E, consanguin. & hered. H de P defuncti, qui de Rege tenuit in capite, infra etat. & in custodia Regis existent, tenuit ad terminum vite. sue, Diem clausit extremum, & Tibi præcipitmus, & O thus; Quia A, qui quasdam terras & quedam tenementa de nobis tenuit per Legem Angl. de her. Muxoris sue dudum defuncte, Diem clausit extremum; Tibi præcipimus, & C.

And if Tenant for life, the Remainder to the King and his Heirs, dieth, the King shall have a Diem clausit extremum

in this manner:

Quia A, que suit uxor, &c. qu. quasdam terras & quedam tenementa tenuit ad vitam suam, & que post mortem ipsius A nobis & heredibus nostris remanere debent, Diem clausit extremum, &c. Tibi precipimus, &c. que eadem sic tenuit, &c. & que post mortem, &c. remanere debent, &c. Or thus; post mortem pred. B ad manus nostras ratione minoris etat. prefat. her. deven, &c.

And

And there are divers other forms of Writs in the Register after the death of Tenant for life, or Tenant in Dower.

And if the King hath the Temporalties of the Bishop in G his hands, and afterwards one who holdeth by Knights Service of those Temporalties dieth, his Heir in Ward to the King, then the Diem clausit extremum shall be in such form:

Rex, &c. Quia A. qui de Archiepiscopatu Cantuar. vacant', En manu nostra existent', tenuit per servic. militare, Diem elausit extremum, &c. Tibi pracipimus, &c. de quibus idem A. suit seisitus in dominico suo ut de seodo,&c. & tenuit de Archiepiscopatu prad', sine dilatione, &c.

And if the King hath an Idiot in his cuflody, and afterwards H the Idiot dieth, the Writ of Diem clausit, &c. shall be thus:

Rex &c. Quia B. de C. nuper Fatuus & Idiota, cujus terre & tenementa ratione Fatuitatis ejusdem in manu nostra existunt, Diem, &c.ut accepimus, Tibi præcipimus, quòd per sacramentum, &c. diligent inquiras quæ terræ & quæ tenementa ratione Fatuitatis præd. B. in manum nostra acxistunt, & de quo vel de quibus tenentur, & per quod servicium, & quantam terræ illæ valent, &c. &c. quis propinquior, &c. &c. In-

quific. &c.

And if a Writ of Diemelausit extremum be sent to the Es. A cheator, and the Escheator be removed from his Office, or dieth before he make the enquiry, &c. then shall issue forth another Writ of Diemelausit extremum, which shall be such:

Rex,&c.Cum nuper dat.nobis intelligi, quod I.de B.qui de nobis ten.in capite, Diem clausit, &c. præceperimus dilecto nobis W. de O. nuper Eschettori nostro in Compræd', quod omnia terras & tenementa, &c. su supra, mutatis mutandis sa cidem W. ab Ossic. prædismenta it amotus, per quod Executio brevis nostri prædiseri non potest: Nos super præmissivolentes certior, tibi præcipimus, quod per sacramentum, &c. diligent. super præmissis sacraments sacra

And another form of Writ in this manner:

Rex dilect. &c. Cum nuper dat. nobis intelligi, quòd I. de B. qui de nobis tenuit in capite, Diem clausit, &c. praceperimus dilecto & sideli nosiro H. de B. nuper Escheatori nostro in eo lem Com', quòd omnes terras, &c. sine dilatione caperet in manum nosiram, &c. donce aliud inde pracepissem, & per savamentum, &c. inquireret quantum terra, &c. [ut in primo Brevi] ac idem H. antequam præd. Breve suerat execut, ab Ossicio præd. suerat amocus: Nos volentes super præmiss, plenius certiorari, tibi præcipimus, quòd super articulis præd. & eor. singulis diligenter facias suquis super articulis præd. & apertè fast, &c. ut supra.

But

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But if the first Escheator do make Inquiry by force of the Writ, and afterwards dieth before the Inquilition be returned into the Chancery, &c. then a Certiorari shall be awarded against his Executors, to certifie the same Inquisition; because it is a good matter of Record when it is found, and the Jurors have put their Seal unto the fame.

If the Kings Tenant, who holdeth of him by Knights fervice, dieth, his Heir within age, and no Writ is awarded within one year after his death, then, after the year is past a Writ called a Mandamus shall issue forth; and that Writ doth not vary in words from the Writ of Diem clausit extre-

mum; and the Writ is fuch:

Rex dilecto sibi W de E, Escheatori suo in Com. B, salut'. Præcipimus tibi, quod per sacramentum proborum & legal. hominum de Balliva tua, per quos, &c. diligenter inquiras quas terras & qua tenementa I de B tenuit de nobis in capite, tam in dominico quam in servicio, in Balliva tua die quo obiit, & quantum de aliis, & per quod servicium, de quant. terre & tenementa illa valeant per annum in omnibus exitibus, & quo tempore idem I obiit, & quis propinguior, &c. & cujus ætatis, & quis vel qui terras & tenementa illa à tempore mortis præd. occupavit vel occupaverunt, & exitus & proficua inde percepit vel perceperunt, quotitulo, & qualiter, & quomodo, &c. & Inqui-

fitionem, &c.

And note, that if a manfue a Writ of Diem claufit extremum, Vide t Eliza it ought to be fued within the year, and after the year he shall have that Writ of Mandamus, and not a Diem clausit extremum. 5 E.4. 13. And if a man fue forth a Writ of Diem clausit extremum, and he loseth the Writ, or the same is taken from him with force against his will, he shall not have a new Diem clausit, &c. But if he hath a Diem claufit, &c. and the Heir be found within age, and that the King hath title to him, because that his Ancestour held of the King at the time of his death by Knights fervice, and afterwards the Heir dieth being in Ward to the King, and no Writ of Diem claufit extremum within the year after his death; yet there a Mandamus shall not be awarded after the year of the death of the Ward, but a new Writ of Diem clausit extremum, because the Heir died in Ward to the King; and that is by the Rule of the Register.

Or if the Kings Tenant who holdeth of the King by Knights fervice in chief dieth, the Heir may have a special Commission directed to certain persons, to enquire what Lands, &c. his Father held the day of his death, &c. and that special Commission shall be as good for the Heir as a Writ of Dien clause extremum after the death of his Ancestour. And upon such

Commission and Inquisition taken thereupon, and found and returned in the Chancery, the Heir at full age shall have his Livery as well as upon a Writ of Diem clausit extremum sued forth, &c. But upon a general Commission to enquire of all Wards, &c. the Law is otherwise; for the Heir upon such a Commission and Inquisition returned shall not have Livery.

When the Heir who is in Ward to the King by reason of Lands holden in Capite cometh to his full age, then he shall have a Writ directed to the Escheator, to prove his age, before he shall have Livery of his Lands, and the Writ is such:

Rex dilecto fibi I de B, Escheatori suo in Com. B, salut. Quia E A de B,qui M, fororem & unam hæred.R defuncti,qui de Domino Ed. nuper Rege Anglia, Avo nostro, tenuit in Capite, duxit in uxorem, dicit præf. M plenæ ætatis effe, & petit à nobis terras & tenementa que sunt de hæreditate ipsius M, & quorum una pars in manu nostra, or alia pars in custod. I de Hzex commissione dicti Avi nostri, usq; ad legitimam atatem hared. ejusdem existunt, sibi reddend', per quod volumus quod eadem M, quæ apud G in Com. N nata eft, & in Ecclesia ejusdem ville bap-[254] tizata fuit, ut dicitur, atatem fuam probet coramte: Tibi pracipimus, quod ad certum diem & locum, quos ad bocprovideris, probationem illam per sacramentum tam militum quam proborum & legalium hominum de Ballivatua, per quos probatio illa capi & veritas ætatis prædict. melius sciri poterit & inquiri, capias, & scire fac. præf. I, quod tunc sit ibi, ad oftendend. si quid pro se habeat vel dicere sciat, quare prad. A, & pradict. M, ut illi que plene atatis eft, fi plene atatis fit, terras & tenementa præd. reddere non debeamus; & Probationem illam sic captam nobis sub sigillo tuo, & sigillis eorum per quos capta fuerit, sine dilatione mittas, & hoc Breve. Tefte, &cc.

And by that Writ it appeareth, that the Writ de Atate probanda shall be directed unto the Escheator of the County where the Heir was born, and not where the Lands of the Heir lie: but yet it seemeth reasonable that he may sue it where the Lands lie; for it may be that he was born where the Kings Writ doth not run, or in Ireland, or beyond the Sea,

as in Calais, &c.

There is another form of Writ thus,

Rex, &c. Quia M de P, filius & hæres F defuncti, qui de nobis tenuit in capite, dic. se plenæ ætatis esse, & petit à nobis terras & tenementa que sunt de hereditate sua, & in custodia nostra usq; ad legitimam ætatem bæred præd', sibi reddi, per quod volumus, &c. [usque ibi, melius sciri poterit & inquiri, capias; & tunc fic | Et probationem illam, &c. ut supra.

There is another form when the King committeeh the Ward

Ward during his Non-age, then when he will fue an Atate probanda, he ought to make mention of the same Commitment.

And if a man be in Ward unto the King by reason of the Temporalties of a Bishoprick in the Kings hands, when the Heir cometh of full age he ought for to sue forth an £tate probanda; and the Writ shall mention the whole matter; and yet he doth not hold of the King in capite.

And when the Heir hath proved his age, and the Writ is returned, then he ought to doe his Homage to the King, or agree with the King for the respiting of the Homage, and

he shall have such Writ:

Rex eidem Escheatori, &C. Scias quod cepimus Homagium I de H, filii & hæredis B de H desuncti, de omnibus terris & tenementis que idem B pater suus tenuit de nobis in capite die quo obiit, & ei terras & tenementa illareddidmus: Et ideotibi præcipimus, quòd acceptà Securitate à præstao I de rationabili Relevio suo nobis solvendo ad Scaccarium nostrum, eidem I de omnibus terris & tenementis prædictis, & de quibus præstais B pater suus suit seissina in dominico suo ut de seodo in Balliva tua die quo obiit, & quæ occasione mort, ejustem B capta sunt in manum nostram, plenam Seisin, habere sac; salvo sure cujussibut de servis & tenementis præd. Secundum legem & cons. regni nostri Anglia contingent, & per nos assignand. Teste, &c.

And the Writ aforesaid lieth, where the Heir was of sull age at the time of the death of his Ancestor, and sueth his Livery: but if the Heir were in Ward, and hath proved his

age, then he shall have a Writ thus:

Rex, &cc. Quia N de E, filius & hær. B de C defuncti, qui de Domino Edward. nuper Rege Angl', Avo nostro, tenuit in capite, ætatem sum coram te sufficient. probavit, sicus per Probationem de mandato nostro captam & in Cancell. nostram retorn. eft compertum; ceperimus Homagium ipsius N de omnibus terris & tenementis que idem R pater suus tenuit de dicto Avo nostro in capite die quo obiit, & ei terras & tenementa illa reddidimus: Etideo tibi præcipim', quòd eidem N de omnibus terris & tenementis præd', & de quibus præd. R pater suus suit spisstus in dominico suo ut de seodo in Balliva tua die quo obiit, & que per mortem ejusdem R in manum dicti Avinostri capta fuer', & in manu nostra sic capta existunt, plenam Seissin. habere sac's salvo jure cujuslibet. Teste, &cc.

And if the Husbandseised in Fee in right of his Wise be outlawed of Felony, for which the Lands came into the Kings hands, and afterwards the Husband who is outlawed dieth; a Writ of Diem clausit extremum shall be awarded, which shall be such:

Si 2 Quia

Quia A, cujus terr. & tenementa, que ipse tenuit de jure & hereditate N nuper uxoris sux adbuc superstit, ad manus Domini Edward. nuper Regis Anglix quarti post Conquest, occasione cujustulagar.in ipsum A pro quadam Felonia, unde indistatus suit, ut dicitur, promulgat, devener, & in manu Domini Henrici, &c. patris nostri, extiterunt, & sic in manu nostra existunt, Diem clauste extremum, &c. Tibi pracipimus, quod per sacramentum, &c. inquiras que terre & que tenementa vation. Felon. præd. ad manus ipsus nuper Regis devener, & adbuc in manu nostra sic existunt, & de quo vel de quibustenentur, & per quod servitium, & qualiter, & quòmodo, & quantum terr. & tenementa illa valent per ann. in omnibus exitibus, suxa verum valor eorund, & quis vel qui terras & tenementa illa à tempore perpetrationis Felon. præd. occupavei vel occupaver, & exitus & prosicua indè percepit vel percep, quo titulo, qualiter, & quomodo: & Inquisco, &c.

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# Que plura.

THE form of the Writ of Quæplura is such:

Rex Escheatori suo, &c. salut. Quia dat. est nobis intelligi
quod A desunct, qui de nobis tenuit in capite, tenuit die quo obiit
plura terr. & tenementa in Com. prædict. quam in Inquisition ind.
post mortem præd. A de mandato nostro capta, & in Cancellar,
nostra retornat, specificatur: Tibi præcipim, quod per sacramentum proborum, &c. inquiras quæplur. terras & tenementa
idem Atenuit in Com. prædict. die quo obiit, & de quo vel de
quibus illa plura terr. & tenementa teneantur, & per quod servic,
& quantum valeant per ann. in omnibus exitibus; & Inquisitio-

nem, &cc.

The Writ of Melius inquirendo, lieth, where the first Office B is sound by virtue of a Writ of Diem clausit extremum, the which Office wanteth certainty in divers points, as in the tenure of divers Lands, or in the value of any of them, &c. then shall issue forth such Writ of Melius inquirendo: but if the sirst Office be found by the Escheator virtue official sui, and not by vertue of any Writ or Commission, and the Office wanteth certainty in divers things, as before; then a Melius inquirendo shall not issue forth, but the Office and Inquisition returned shall be as void, because it is not found by vertue of any Commission or Writ, but only ex Officio of the Escheator, without any command to him to do the same; and therefore the same shall be taken as void, if it want certainty in any point.

#### Melius inquirendo.

THE form of the Writ of Melius inquirendo is such:

Rex Escheat, &c. salut. Cum per quandam Inquisic.coram A Escheatore nostro in Com. præd. de mandat. nostro capt. & in Cancell. nostra retornat, sit compert, quod N desuncius tenuit divers. terras & tenement. cum pertin. in Com. præd., & quis propinquior hæres ejusdem N sit ex parte patris sui Juratores Inquisitionis prædicti. ignorant, tamen ex parte R, matris prædict. N, sil. W, B est ejus bæres propinquior, & ætatis viginti unius annorum & amplius; & quia in Inquisitione prædict. quis propinquior hæres ipsius N existat minimè specificat; Tibi præcipim, quod per sacrament, &c. inquiras quis propinquior hær. præd. N

existit, qualiter, & quomodo : & Inquisitionem, &c.

There is another form of Writ of Melius inquirendo, because he doth not specifie in the Inquisition what Estate the Tenant had in the Lands; or because he doth not shew in the Office of whom or of who the Lands were holden; or because he doth not mention in the Writ the true value, and the King is informed that the Lands are of greater value than is certified by the Office. And note that a Melius inquirendo shall be awarded upon a surmisemade in Court, that the Lands are of greater yearly value than is declared by the Office; and upon like reason upon a surmise made, that they are holden by other Services, or that the Tenant was seised of other Lands or other Estate than is mentioned in the Office, a Melius inquirendo shall be awarded.

#### Writ of Livery.

There is another form of Writ of Livery, where the King's Tenant in Capite dieth, his Heir within age, and the K. feiseth the Ward, and afterwards that Heir dieth within age, and in Ward to the King, for which the Lands come unto his Heir who is within age, and in Ward to the King; now when that Heir cometh of full age, he shall have a Writ of Livery in this form:

Rex dilecto, &c. Escheatori suo in Com. I, salut. Quia I, frater & har. S, silii & har. I S desuncti, qui de nobis ut de Honore H in manu nostra existent. tenuit per servici, reddend, ad Wardam Castri Dover. decem solid, per annum, atatem suam cor. Roger. de W, nuper Escheat. nostr. in Compræd, suffic. probavit, sicut per Probat. illam de mandato nostro capt, & in Cancell. nostram retorn, est compertum; cepimus Homagium 49 Fideliti-

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tem ipfius I, fratris S, de omnibus terris & tenem. que præd' I S pat. tenuit de nobis ut de Honore pd. die quo obiit, & que post mortem prædict. I S patris, & ratione minoris etatis ipfius S. qui quidem S dum infra etatem & in custodia nostra fuit diem clauset extremum, ad manus nostras devener', debit', & eidem I, fratri S, omnia terr. & tenem. illa cum pertin. reddidimus. Et ideotibi pracipimus, quod eidem I, fratri S, de omnibus terris & tenem. prad. cum pertin', & de quibus prad' I S pater fuit feisit. in dominico suo ut de feodo in Ball. tua die quo obiit, & que per mortem ipfius S patris, & ratione minoris ætatis ipfius S, ad manus nostras devener', & sic in manu nostra ratione minoris ætat. ejusdem I, fratris S, adbuc existunt, plenam Seisinam baber. fac'; falvo jure cujuflibet. Tefte, &c.

And when an Heir shall have Livery at his full age, and F holdeth one Mannor in Capite of the King by Knights Service, and holdeth other Lands in feveral Counties of others, then a Writ shall iffue to the Escheator of the County where he holdeth in capite; and the form shall be such; [256] Scias quod cepimus Homagium, &c. And the Writs to other

Escheators begin thus; Cum ceperimus Homagium, &c.

21 E.3.41. ac'. Of the Honour of So 29 H.8.

And it appeareth by the Writ before, that to hold Land A to render a certain Rent for the guarding of the Castle of Dover shall be a Tenure in Capite, and by Knights Service; Berkamstead and it may be that in ancient time he should guard the Caftle, and that now the King hath taken Rent for the fame, and yet the taking of the Rent doth notalter the nature of the Tenure. Quere.

> If two men by License purchase Lands holden of the B King in Capite, and afterwards one of them dieth, the other shall have the Lands cum exitibus out of the Kings hands upon the matter found by Inquest; but by the Register he

ought to shew the Licence in the Chancery.

And if the Kings Tenant who holdeth in Socage dieth, C 213 rule ac'. his Heir of the age of 14 years and more, and the King feifeth the Lands, he ought for to fue Livery of them. But it seemeth the King ought not for to seise the other Lands which he holdeth of other Lords by other Services,&c. and if he do, the other Lords shall have a Writ of Amoveas manum, which is called an Ouster le main, una cum exitibus, &c.so as they shall have the issues and profits thereof which were taken by the King, and the form of the Writ is fuch:

> Rex dilecto fibi A, Escheatori suo, &c. Quia accepimus per Inquisic. quam per te fieri fecimus, quod I de T defunctus tenuit in dominico suo ut de feodo, die quo obiit, unum mesuagium & unam bovat. terræ cum pertin. en K de nobis in capite, ut de

Honore

4 Eliz. Dyer Plow Com. 109. 204. 20 Eliz. Dyer 362.

Honore Abbatia Maria in manu nostra existent', per fidelitatem & per servitium trium solidorum & novem denar. nobis annuatim reddend', & quod nontenuit aliqua alia terras & tenementa de nobis in capite ut de Corona In Ballivatua die quo obiit, per quod cuftod. terr. & tenement. que fuer. præd. I die præd. ad nos ad præf. debet pertin', & quod tenuit die prædict. divers. alias terras & tenementa de diversis dominis pro divers. servic'; quodque N, filius pd. I, est har. ejus propinquior, & ætatis sexdecim annorum & amplius; cepimus Fidelitatem ipfius N de mef. terris præd', bea ei reddidimus. Ideo tibi præc', quod accepta Securitate à praf. N de rationabili Relevio suo nobis solvend. ad Scaccarium nostrum, eidem N de mesuag. & terr. præd', que occasione mortis ipsius I cepisti in manum nostram, plenam Seisinam habere facias, Jalvo jure cujuslibet : de aliis verò terris & tenememtis, que prefatus I tenuit de aliis dominis in Balliva tua die quo obiit, que similiter occasione mortis prædicti I cepisti in manum nostram, te ulterius non intromittas, salvo jure nostro & alterius cujuscunque & exitus, si quos de terris & tenement. que de aliis dominis sic tenent. perceperis, illis ad quospertinent liberes.

And by this Writ it appeareth, that the Heir in Socage being of full age at the time of the death of his Ancestor 45 E.3.19. shall have Livery cum exitibus; but if he were within the Stam. Preage of 14 years at the time of his Ancestors death, his pro- rogat. 13. chein amies must sue an Ouster le main cum exitibus : But the other Lords shall have an Ouster le main for the Lands hold-

And if the King hath the cuftody of an Idiot, and of his Lands, which are holden of the King in Capite, and the Idiot dieth, and his Heir be of full age; the Heir shall have a

en of them by Knights service cum exitibus.

Writ of Livery in this form:

Rex Escheatori,&c. Quia accepimus per Inquisic. quam per te fieri fecim', quod diversaterr. & tenementa cum pertin. in O in manum domini Ed. quondam Regis Angl', avi nosiri, ration. Fatuitatis & Idiot. W de P jam defuncti capta fuer', & in manu nostra sic existunt, & quod eadem terr. & tenement. tenentur de nobis in capite, ut de Honore Abbatia Maria in manu nostra existent', per servitium octavæ partis unius seodi milit', & fac. Sect. ad Wapentag. nostrum de Holdernes. de tribus septiman. in tres, ac reddendo ad Wardam Castrinostri de Skipton. ad medium Quadragesim. decem & septem denarios; quodque Galfridus, filius Will. de Redmain, consanguineus pd. Will'sest bares ejusdem Will. propinquior, & plena attis ; cepimus Fidelitatem ejufdem Galfrid. de omnibus terr. ten. pd', & illa ei reddidimus, ac Homag.ejusd.Galfrid.usque ad Festum SIA

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Paschæ proxim. sutur. de gratia nostra speciali respectuamus: Et ideo tibi præcipimus, quod acceptà Securitate à præsat. G de rationabil. Relevio suo nobis reddend ad Scaccar nostrum, eide G de omnibus terris & tenement. pd. in manu nostra exist. plenam

Stifin.habere fac', salvo jure cujustibet. Tefte, &c.

And when the Heir in Ward unto the King is of full age, E he shall have a Writ out of the Chancery unto the Keeper of the privy Seal, testifying that he is of full age; and thereupon he shall have a privy Seal unto the Kings Chamberlain to receive his Homage; and when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage; and thereupon he shall have a Writ of Livery. And all this matter appeareth at large in the Abridgments, in the title Livery, which see there

And if three Coparceners be in Ward to the King, the F Coparcener who first cometh of age shall sue Livery, and

shall have Partition made thereupon.

And if an Heir female be in Ward to the King, and hold-Geth of other Lords in Socage; now when she cometh of the age of 14. years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her age of 16. years, if she be not married before that age, for she shall

fue Livery but once for all her Lands, &c.

And if the Heir of full age sueth his Livery, and omitteth A any parcel of his inheritance, as an Advowson, or a Reversion, or one Acre of Lands which is not found by the Writ of Diem clausit extremum, and thereupon sueth his Livery; if it be found afterwards by another Office, that his Ancefordied seised of that Advowson, Reversion, or acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reseise all the Lands, &c. and the Heir shall answer the K. for all the Rents, illues and profits received in the mean time by the Heir, &c.

If the Kings Tenant holdeth by Knights Service and in B Capite, and also holdeth other Lands of the Archbishop of Canterbury by Knights Service, and dieth seised, his Heir within age; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward: and that is by the Statute of Prengativa Regis, c.t. And if the King seiseth all the Lands, the Archbishop shall have an Ouster to main cum exitibus.

And if the Kings Tenant, who holdeth in Capite and C by Knights Service, dieth feifed, and a firanger doth abate, for which the Heir at full age recovereth by Affife of Mort-

daunceftor ;

E

dannessor; yet he ought for to sae his Livery, and to do his Homage, and the Abator shall answer the King the mean profits and iffues received. And the Writ de Atate probanda may be idirected to certain Commissioners to enquire of the age of the Infant, as well as unto the Escheator, and the form of the Commission is such:

# Commission pro Ætate probanda.

DREX dilectis &c. Sciatis quod assignavimus vos ad inquirend. per sacramentum tam militum quam aliorum proborum & legal. hominum de visn. de N in Com.Linc', si I, silius & hares B, apud N natus, & in Ecclesia ejusam Villa baptizatus, & qui ratione minoris etatis sue in custodia nostra existit, plen. etatis sit, ut dicit, necne. Et ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Inquisitionem illam faciatis, & illam distincte & aperte fact. nobit in Canc.sine dilatione mittatis, & hoc Breve. Mandavimus enim Vic. nostro Linc', quod ad diem & locum quos ei scir.sac. venire fac', &c. In cujus rei testimonium, &c. And thereupon a Writ shall be sent to the Sheriff to return an Empannel before the Commissioners at a certain day by them appointed. And the Writ shall be such:

Rex Vic', &c. Precipimus tibi, quod sum.per bonos Sum.xij. tam milites quam alios probos & leg ales homines de visin. de N, quod sint coram dilectis & fidelibus nostris A,B & C, & hiis quos sibi associamus, ad certos diem & locum quos iidem A, B, & C tibi scire faciant, parati sacramento recognoscer', si F filius & hæres D, apud N natus, & in Eccles ejusdem Vill. baptizatus, qui ratione minoris ætat. sue in custodia nostra existit, plenæ ætatis sit, ut dicit, necne; & interim ad præd' Eccles. Villam accedant, & veritatem ætatis præd. diligent. inquirant: & nomina eorum imbreviarisac'. Et scire sac. E & S, custodibus terræ præd. hæredis, quod tunc sint ibi ad audiend. illam Recogn', & ad ostendend', si quod obstare debeat quar. præd. I terras & tenementa sua babere non debeat. & habeas ibi nomina illorum duodecim. & hoc Breve. Telle. &c.

And thereby it appeareth, that if the King hath committed the Wardship of the Land unto another, that the Committee shall be warned to be there; but if the King hath the Lands in his own hands, then that clause, Et scire facias E et S custodibus, &c. shall be omitted out of the Writ.

F And by the Rule of the Register, a Woman shall do Homage and Fealty, and shall pay a Relief when the sueth her Livery, if the be of sull age at the time of the death of her Ancestors : and if she hath a Husband, if they have issue when they sue Livery, then the Husband shall do the Homage and Fealty; but if they have no issue, then the Husband shall do only Fealty.

And if two Joynt-tenants be, who hold of the King by G license of Purchase, and one of them dieth, the other shall have an Ouster le main cum exitibus: but if the Purchase be made without Licence, then not, because that the King shall seise the Lands for the Alienation without License.

And if the Kings Tenant hath Lands in several Counties, some holden of the King, and some of other Lords, the Writ of Livery shall be directed unto the Escheator of that County where the Land which he holdeth of the King in tapite lieth, and the Writ shall begin, Scias quod cepimus Homagium, &c. and he shall have Writs unto the Escheators of the other Counties, and the Writs shall begin thus, Cim seprimus, &c.

### Writ of Livery post mortem Patris & Matris.

W Rit of Livery after the death of the Father and I Mother, &c. lieth where the Father and Mother hold feverally Lands in Fee of the King in capite, and they die, their Heir of full age, he may sue any Writ of Livery to have Livery of the Lands of them both, and is not bounden to sue several Writs, as severally Heir to them. And the form of the Writ is:

Rex dilect. sibi N de W, Escheat. suo in Comit. S, salut'.

Sciatis quod cepimus Homagium, et Fidel. R de B, filii et hæred.
R de B che'r, et Iuxoris ejus defunctor', nobis debita pro omnibus terris et ten'tis que præs. R et I tenuerunt de nobisin capite diebus quibus obierunt, et ei terras etten'tailla cum pertin. reddicimus: et ideo tibi pracipimus, quod acceptà Securitate de præs. R de rationabili Relevio suo nobis solvend. ad Scacc. nostrum, eidem R de omnibus terris et ten'tis præd.cum pertin. in Ball. tua, et de quibus præd. R et I suevint seistii in dominico suo ut de seod. in Ball. tua diebus quibus obierunt, et quæ post mortem præd. R et I capta sunt in manum nostram, plenam Seisinam habere sac', salvo jure cujuslibet. Teste, &c.

# Writ of Livery after the death of Tenant by the Courtefie,

THere is another form of Writ, after the death of Tenant A by the Courtefie, thus:

Rex dilect. sibi Escheat. suo in Com. Linc', &c. Sciatis quòd cepimus cepimus Homag. G de N, filii I de N defuncti, de omnibus terris et ten tis quæ idem I tenuit per Legem Angl.die quo obiit, ut de jare N nuper uxor. ejus jam defunctæ, quæ de nobis tenuit in capite, matris præd. G, cujus bær. ipse est, nobis debit, et terras et tenementa illa ei reddidimus: et ideo tibi præcipimus, quod acceptà Securitate ab eodem G de Relevio suo nobis solvend. ad Scaccarium nostrum, eidem G de omnibus terris et tenementis præd.cum pertin, quæ per mortem pd. I capta sunt in manum nostram, plenam Seisinam babere fac, salvo jure cujuslibet. Teste, & c.

And thereby it appeareth, that the Tenant by the Courtefie shall have the Lands after the death of his wife, without suing an Ouster le main for those Lands holden of the King, but that the Heir after his death shall sue his Livery for them,&c.because that the Tenant by the Courtesie doth

remain Tenant to the King.

And if a man have Lands which are held of the King in Capite by the Courtesse, and he hath other Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Courtesse, although the Lands of which the Tenant by the Courtesse was seised in Fee were not holden of the King in Capite, &c. because that as well those Lands are seised into the Kings hands, as the Lands which he held by the Courtesse; and the Writ shall be such:

Rex dilecto sibi, &c. Escheat. suo in com. Ebor', salutem. Scias quòd cepimus Homag. & Fidel. G, silii & haredis W de S, & I qua fuit uxor ejusdem W de S, desuncior', de omnibus terris & tenementis qua præd' W de S pater suus tenuit tam per Legem Angl. de hareditate pradict. I quond. uxoris sua post ei terras & tenementa illa reddiaimus: & ideo tibi pracipimus, quòd acceptà Securitate à præs. G silio de rationabili Relevio suo nobis solvend. ad Scaccarium uostrum, eidem G, silio W de S, de omnibus terris & tenementis præd. cum pertin', & qua præd. W de S pater suus tenuit tam per Legem Angl. post mortem præd. I quond. uxoris sua, quàm in dominico suo ut de sodo in Ball. tua die quo obiit. qua post mortem ipsius W de S capta sunt in manum nostram, seisinam habere sac', salvo jurz cujuslibet. Teste, & c.

And if the Kings Tenant dieth, and after his death his Wife be endowed, then after the death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the Kings hands, and the Heir shall sue Livery of them.

And the Writ shall be such :

Writ of Livery after the death of the Tenant in Dower.

REX dilecto sibi T de S, Escheatori suo in Com. Ebor', salutem. B
Scias quod cepimus Homagium & Fidelitatem dilecti &
fidelis nostri R Baron. de F, nobis pro omnibus terris & tenementis que A, que fuit uxor R de N, quondam uxor R nuper
Baronis de F, post mortem predict. R nuper Baronis de F, primi
viri ipsus A, avi ipsus R nunc Baronis de F, de nobis tenuit
in capite die quo obiit, debit', & ei terras & tenementa illa cum
pertin. reddidimus: & ideo tibi precipimus, quod accepta Securitate à press R nunc Barone de F de rationabili Relevio nobis
solvend. ad Scaccarium nostrum, eidem R nunc Baroni de F de
omnibus terris & tenementis predict. cum pertin. que presat. A
ten. in dotem post mortem predict. cum pertin. que presat. A
ten. in dotem post mortem predict. ha ali, tua die quo obiit, & que
post mortem predict A accept. sunt in manum nostram, plenam
Seisinam babere sac'; salvo sure cujuslibet. Teste, & e.

And by that it appeareth, that Tenant in Dower who is endowed in the Chancery,&c. of Lands holden of the King in capite, or of other Lands which are in the Kings hands by the death of his Tenant, that the shall hold them of the King, and the Heir shall have Livery of those Lands after her death: yet it seemeth that the Reversion of those lands which she holdeth in Dower remaineth not in the King, but in the Heir; and if she commit Waste, the Heir shall punish

the Waste.

There is another form of Writ of Livery, after the death C of the Kings Tenant, who holdeth parcel in Fee, or parcel in Tail or for Life, thus:

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Writ of Livery after the death of Tenant in tail and Tenant for life.

R Ex dilect, &c. Escheatori suo in Com. Salop. & March. Walliæ eidem Com. adjacent, salutem. Quòa cepimus Homag. & Fidelicat. dilecti & sidelis nostri I de B., filii & bæed. I de B senioris, de omnibus terris & tenementis cum pertin. quæ idem I tenuit de nobis in capite, tamin seodo quàm ad termin. vit.e., die quo obiit, & que post mort. dicti I patris dicto I silio pertin. descendere, vel eid. I silio & Sux. esus & bæred.de corpor. suis exeuntibus debent aliqualit. reman, & ei terras & tenementa illa reddidimus: ideotibi præcipimus, quod acceptà Securitate à præs. I de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eidem I silio de omnibus terris & tenemen-

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tenementis præd. cum pertin, & de quibus præd. I pater suus suit seisit. in dominico suo ut de seodo talliato, quorum Reversio ad diet. I filium pertinet, in Balliva tua die quo obiit, & quæ per mort. esusd. patris sui capta sunt in manum nostram, plenam Seisinam babere sacias, salvo jure cujuslibet. Teste, & c.

And if Tenant in tail holdeth of the King in capite, and dieth, the Heir then of full age, he shall have such Writ of

Livery.

Writ of Livery for the Heir in tail.

AREX,&c. Scias quod cepimus Homag. & Fidelitat. dilect.
nobis W.&c. filii & hæredis W de B defuncti, de omnibusterris & tenementis quæpræd' W pater suus sibi & hær. suis
de corp. suo exeunt, ex dono & concessione W de S per Finem
indè in Cur. nostra delicent. nostra levat, de nobis incapite die
obitis sui tenuit, & terras & tenementa illa eireddidimus: &
ideo tibi præcipimus, quod acceptà Securitate à præsat. W, &c.

And if the Kings Tenantholdeth by Petit Serjeanty, and dieth, and his Heir be within age of eighteen years, then he shall have a Writ to have Seisin of the Lands, thus:

# Writ of Livery for Lands by Petit Serjeanty.

B R EX dilecto, &c. Escheat. Suo in Com. Suff. salutem. Quia accepimus per Inquisition. quam per te fieri fecimus, quod TP defunctus tenuit in dominico suo ut de feodo die quo obiit decem mesuag', centum acr. terra, quadraginta acr. prati, &. decem acr. pastura, triginta acr. mora, ac viginti solid. reddit. cum pertin', in W com. præd', de nobis in capite, per servitium vigintisolid. nobis ad Manerium de Lannuatim solvend. pro omni servitio, et quod non tenuit aliqua alia terr. seu tenementa in dominico suo ut de feodo de nobis, nec de aliis, in Com. præd. die quo obiit, et quod W, filius præd. T, eft bæres ejufd. T propinquior, et ætatis decem et octo annor. et amplius; Tibi præcipimus, quod capta Fidelitate ipsius W juxta form.cujusd.scedulæ prafentibus interclausa, et acceptà Securitate ab eod. W de rationabili Relevio suo nobis solvend. ad Scaccar. nostrum, eid.W de mesuag', terra, pratis, mora, et redditupræd.cum pertin',que per mort. prædis? T capta funt in manum nostram, plenam Seisnam habere fac', salvo jure cujuslibet. Teste, erc.

And thereby it appeareth that the Heir in Socage shall not have Livery cumexitibus, &c. if he pass the age of 14 years; but within the age of 14 years he shall have Livery cum exitibus, &c. and the same is holden for a difference at

his day.

The Kings Tenant hath iffue a Son D de B, and two C Daughters, and dieth; and the faid D de B hath Livery, and afterwards hath iffue a Son H de B, and dieth, the faid H being in Ward to the King for his Non-age, and afterwards one Sifter hath iffue a Son and dieth, and afterwards H dieth being in Ward to the King, and his Aunt and the Son of the other Sifter, being of full age, fue to have Livery: now they ought to have a Writ directed to the Escheator, by which it shall be commanded to the Escheator to make Livery to them, and to make Partition between them of those Lands which are in the Kings hands, so as each Coparcener shall have part of the Lands which are holden of the King in capite; and the Writ shall be such:

Writ of Livery for the Aunt and Neece to make Partition.

R EX dilecto fibi A deH, Efcheat. fuo in Com', &c. falutem. Scias quod cepimus Homagium & Fidelitat. tam de D de B, filio A de B, unius foror. D de B, quam de T de B, alter. foror. præd.D de B,confanguin. & bæred. H de B, filii & hær. prædict. D de B defunct', qu. de nobis tenuit in capite, nobis, pro omnibus terris & tenem. quæ præd. D de B tenuit in capite, que per mort.præd.D de B, & ratione minoris ætatis H, filii & hær.ejufd.D de B, qui quidem H dum infra ætat. & in cufted. nostra fuit Diem clausit extremum, ad manus nostras devener, debita, & eisd.D de B & T terr. & tenem. præd. reddidimus ; & ideo tibi præcipimus, quod acceptà Securitate à præf.D de E, & T, de rationalibus Releviis suis nobis solvend. ad Scaccar. nostrum, factaque legali partitione omnium terrarum & tenemen. cum pertin. in Balliva tua, que per mort. prædict' D de B, & ratione minoris atatis pd.H, ad manus nostras devener', & in manu nostra adbuc existunt, juxta Extent. inde factam, vel aliam si necesse fuerit iterato faciend', in duas partes æqual', in præsent.pd.D de B & T,vel Attorn. suoru in bac parte præmuniendor', fi intereffe voluerint, eifd. D de B & T de partibus suis, ipsinde juxta partition. ill. secundum Legem & Consuetud. regni nostri Angl. contingent', plenam Seisinam habere fac', salvo jure cujustib'. Proviso semper, quod uterque pd. D de B & T partem terr. O tenem. que de nobis tenent. in capite. O parpartem sua habeat, & tenens noster existat cum pertin.ill. &c. Teste, &c.

And if a man and his wife hold a Mannor of the King A in capite in tail, and die, and have iffue two Sons, and the younger Son is found Heir by virtue of a Writ of Diem claufit

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clausit extremum, and of full age, and the King maketh Livery unto him of the Mannor, and afterwards by another Office found by Commission,&c. it is found that the elder Brother is Son and Heir, &c. then upon the last Office found the King shall send a Scivesacias directed to the Sherist, to warn him to shew why the Mannor shall not be reseited into the Kings hands, and he to answer the Profits received in the mean time. And if the Sherist do return the Writ served, and that the party is warned and doth not appear; then the King shall reseite the Lands, and shall make Livery of that Mannor unto the elder Brother; and the Writ by which the Service shall be made shall be such:

Writ of Livery, and to make void a Livery made before.

R EX dilecto fibi, &c. Escheatori suo in Com', &c. cum nos nuper, comperto per Inquisition. H. de S, Escheatoris nostri in Com.præd', ad mandatum nostrum captam, & in Cancell. nostram retornatam, quod I, filius HB defuncti, & T uxor.ejus, que praf. I quondam virum suum supervixit, similit. defunct', tenuerunt diebus quibus obierunt in feodo talliat. fibi & her. suis de corporibus suis exeuntibus Manerium de I cum pertin. in Com.præd.de nobis in capite per servitium milit', & quod T, filius præd. I & T, tunc fuit propinquior b.er. eorund. I & T, & plenæ ætatis cepimus Homagium & Fidelitat.ipfius T, nobis pro Man.præd.debita, & ei Man.illud cum pertin.reddidimus,illudque sibi mandaverimus liberari, sicut per inspectionem Rotuloru Cancellariæ nostræ plenè liquet; ac postmodum supplicant. nobis HB, filio & hær. eorund. Í do T, ut chm per quandam aliam posteriorem Inquisitionem, per præf. Escheat. de mandat. nostro captam, & in Cancell. nostram retornatam, fit compertum, quod præd. I & Ttenuerunt diebus quibus obierunt in feodo talliato fibi & hæred. suis de corporibus suis exeuntibus præd. Manerium cum pertin. de nobis in capite per servitium militare in forma prædicta, & prædictus H, filius prædict. I & T, ætatis quadraginta & fex annorum, est frater senior ejusdem T, & hæres eorundem I & T propinquior, absque hoc quod prædict' Test hæres corundem I & T propinquior, prout per dictam primam Inquisitionem supponit', velimus Man. prædict. cum pertin. in manus nostras resumi, & eidem H, ut fratri feniori praditt' T, & propinquiori bar. eorundem I & T, liberari jubere; ac nos volentes in bac parte fieri quod est justum. præceperimus per Brev. nost. Vicecom. nost. Com. prædict. quod scire faceret prafat.T, quod effet cor. nobis in Cancellar. noftra

nostra in Octavis S. Hilarii proxim. praterit', ubicunque tunc foret, ad offendend. fi quid pro fe haberet aut dicere fciret quare Man. præd. cum pertinen', una cum exitibus inde per ipsum perceptis, in manum nostram resumi, & idem Man. præf. H,ut fratri Seniori ejusdem T, filio & propinquiori bær.eorund.I & T, liberari, & nobis de exitibus præd.per præf. T fic percept. respond. non deberet, & ad faciend. ulterins & recipiend. quod Cur. nostra consideravit in hac part'; ac prædi&. Vicecom. nobisretornaveret, quod scire fecit prafat. T quod effet coram nobis in Canc. nostra ad diem prædict', ubicunque tunc foret, ad oftend. quod Breve nostr.pd. requirebat, ad quem diem præd. T in Canc. præd. solemniter vocat. non comparuit, per quod considerat. fuit, quod Manerium præd. cum pertin', und cum exitibus inde per pd. T percept', in manum nostram resumant', & nobis de exitibus eifd. respondeatur, dictumque Maner. præf. Hliberet'; cepimus Homagium & Fidelit. ejusd. H, nobis pro Manerio pd. cum pertin. debita, & ei Maner illud cum pertin. reddidimus: Tibi præcipimus, quod resumpto in manum nostram Manerio pd. cum pertin. in Balliva tua, una cum exitibus pd', & accepta Securit. à præfat. H de rationabili Relevio suo nobis solvend. ad Scacc. noftr', eid.H de Manerio pd. cum pertin. plenam Seifin. fine dilatione haber facias, fax confider pa'; falvo jure cujuflibet, & salvis nobis exitibus de Maner. pd. à tempore mortis præd. T sic percept'. Tefte, oc.

Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.

The Writ which shall be directed to the Escheator to E deliver Seisin of Lands unto one Coparcener, or divers, where any of them are within age, and in Ward, is made in several manners. One manner of Writ is, when one Coparcener is of sullage, and the other Coparcener is within age, and in the Custody of P, to whom the King hath committed the Wardship; then by the assent of the Kings Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Escheator shall be such:

[261] Rex dilecto sibi I de W, Escheat. suo in Com. Som. & Dors. salutem. Sciatis quod ex assensu P. &c. Custod. T de M, silie A, unius sororum T de B desuncti, qui de nobis tenuit in capite, infra etatem & in custodia nostra existent; consanguin. & unius har, cui una propars, & C sororis, & alterius har. præd. T de B, plenæ etatis existent, cui altera propars tam

terrarum

terrarum & tenementor. que Margeria, que fuit uxor T de B senior. similit. desunct, tenuit in dotem, seu aliàs ad terminum vite sue, bereditat. pred. T de M & C die quo obicit, pertinent, assignavimus præsic maneria, terr. & tenementa subscripta, viz. manerium, &c. habend.in propartem ipsius C, ipsam de omnibus maneriis, terris & tenementis præd. secundum Legem & consregui nostri contingent, & eidem C, cujus Homagium & Fidelitatem cepim, in propartem suam præditt. reddidimus: Et ideo tibi præcipimus, quod acceptà Securitate de præss. C de rationabili Relevio suo nobis solvend. ad Seaccariam nostrum, eidem C præd. maner, &c. cum pertin. suis in Balliva tua liberes habend. in

propart. fua præd'; falvo jure cuiuflibet, &c.

And the Kings Tenant hath iffue R N his Son, and Alice his Daughter, and dieth, and afterwards R N hath iffue a Son F, and two Daughters Eand C, and afterwards R N dieth seised, F being within age, and afterwards F dieth seised in Ward to the King within age; and after his death it is found by virtue of an Office by Writ, that E and C are his Sifters and next Heirs, and of full age; and afterwards by another Office it is found by Commission, &c. that M son of the said Alice, one of the Sifters of the faid R N, and 7, another Sifter of the faid RN, Father of the faid F, was Cousen and next Heir to the faid F, and of full age; upon which the Sifters of the faid F came into the Chancery, and had a Scire facias against the said M, son of the said Alice, and the said I, &c. to fhew wherefore they should not have Livery of the Lands as Heirs, &c. And that Writ of Scire facias was made returnable the Monday which was the second week of Lent; by which it appeareth that the Writs which shall be sued in Chancery may be returned there in the Vacation time, out of Term: and upon the return of that Scire facias, the faid M came and granted that he was not Heir, &c. whereupon the two Daughters E and c had a Writ of Livery directed to the Escheator, reciting all the matter, and reciting in the Writ, that the King had respited their Homage until a certain day, commanding the Escheator that he make Partition betwixt them, and that he affign to each of them part of the Land which is holden of the King in Capite; which Writ shall be returned and enrolled in the Chancery; the which Writ is in the Register, fel. 316.

# Partition and Livery after the death of Tenant by

F it be found by Office by vertue of a Writ, that B held B the Mannor of B by the Courtefie of England, in the right of E who was his Wife; which Manor is holden of P by Knights service; and it be farther found by the same Office. that B is dead; and M and A are his next Coufins and Heirs, and one of them is within age, and the other of full age: then he who is of full age shall have a Writ of Livery to the Escheator, that he take Security for the payment of his Relief, and that he make Partition betwixt the two Heirs, viz. M and A, in the presence of him who is of full age, and in the presence of the prochein amies of him who is within age, and that he deliver Seifin of his part to him who is of full age, and that he retain in the Kings hands the part of the other Sifter. Which Writ shall be returned and enrolled in the Chancery, and that Writ appeareth in the Register, fol. 317.

And the like Writ is in the Register, where the Kings Tenant dieth, one of his Daughters within age, and the other

of full age, in the same folio 317.

## Partition and Livery for Lands in Socage.

IF a man holdeth Lands of G in Socage, as of his Manor C of B, which G and the Manor is in the Ward of the King for the Non-age of G. and also he holdeth other Lands of other Lords by other tervices, and dieth, and hath iffue two Daughters, whereof one is within age, and the other of fullage; they shall have Livery out of the Kings hand, fc. the prochein amies of the Heir within age shall have Livery cum exitibus, and the other Daughter shall have Livery fine exitibus, and a special Writ shall be directed unto the Escheator in that case, reciting the whole matter, and how that the King hath taken Fealty of her who is of full age, and delivered to her her part, commanding the Escheator by the Writ, that he take Security of her of full age for her Relief, and that he make Partition betwixt the Daughters of the Socage Land; and that he deliver the part of the younger unto her prochein amies, with the Islues and Profits of that part from the death of the Ancestour; and that he intermeddle not with the Lands holden of the other Lords: which fee Register, fol. 218. If

If the Kings Tenant hath iffue three Daughters, and he [262] giveth part of his Landsunto one of his Daughters in Frankmarriage, and one of the other two Daughters hath iffue within age and dieth, and afterwards the Tenant in Frankmarriage dieth his Heir of full age, and then the Kings Tenant dieth, and then by Office virtute Brevis it is found, that the Daughter of the Kings Tenant and the Issue of the two Daughters are Heirs to the Kings Tenant, and that the Issue of one of the Daughters is within age; and afterwards by another Office it is found, That the Kings Tenant gave part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the Issue of the second Daughter, who is within age, have a Scire facias against the issue of the Daughter who was advanced in Frank-marriage, to shew at a certain day in the Chancery wherefore the Lands, of which the Kings Tenant died seised, &c. should not be delivered to them as Heirsonly unto the King's Tenant; and if the iffue of her who was advanced in Frank-marriage, being warned by the Scire facias, and so returned warned by the Sheriff, maketh default, or cannot shew matter sufficient to maintain her Title; then thereupon a Writ of Livery shall be awarded to the Escheator, rehearsing how that the King hath taken Homage and Fealty of the eldest Daughter, and that he hath rendred to her her part, commanding the Escheator, that he take Security of the eldest Sifter to pay her Relief into the Exchequer, and that he make Partition in two equal parts in the presence of the parties, if they will come, and that he deliver Seifin to the Sifter of full age of her part, and that he retain the other part in the King's hands for the Non-age of the Daughter of the other Sifter. See the Writ thereof in the Register,

If A holdeth a parcel of Lands in Socage of B, which B is in Ward to the King, and also the said A holdeth another parcel of Lands of & in Socage, who is also in Ward to the King for Non age, and also the said A holdeth other Lands of several other Lords by other Services, and afterwards the said A hath iffue seven Daughters, and afterwards one of the Daughters hath iffue within age, and dieth, and then A dieth, and all that matter be found by Office; then upon that Office returned they shall have a Writ to the Escheator, commanding him that he take Fealty of the fix Daughters for their parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into seven parts in the presence of the parties, if they will be there, and

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that he deliver full Seifin to the fix Sifters of their parts, and that he keep in the King's hands the part of her who is within age, until the King otherwise command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are assigned for the part of her within age, unto the prochein amie of the Infant to whom the Inheritance cannot descend, and that he deliver the issues and profits of the Lands holden of other Lords than of those Lords who are in the Custody of the King, to those who of Right ought to have them. And after that this Writ is awarded to the Escheator, if the Escheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Sifters may fue forth a new Writ to the new Escheator, reciting the whole matter, and how the Escheator was removed before he had executed the command unto him, commanding the new Escheator, that if the Partition be not made, that he do all such things as the other Escheator ought to have done, and retain in the King's hands,&c.

And then if the new Escheator upon that new Writ return unto the King in Chancery, that by vertue of the faid Writ he hath made Partition of feven parts of those Lands, and that he hath retained in the King's hands the part of her who is within age, and that he hath delivered unto three of the Sifters their parts, and that the other three Sifters did not come to take their parts, so that they remain in the King's hands; upon such return the said three Sifters may come into the Chancery, and pray to have a Writ unto the Escheator, with the Transcript of the Partition to be enclosed therein, commanding him to take Security of them for their Reliefs, &c. and that he deliver to them their parts appertaining unto them, according to the Partition made, retaining in the King's hands the part of her who is within age, untill he hath command to the contrary, and thathe return the Writ, and what he hath done upon the fame, under his Seal, fully and openly without delay. See the Writ thereof in the Register, 319.

And it appeareth by the Register, that if the King's Tenant C hath issue two Daughters, and one be within age, and the other of full age, and dieth, that she who is of full age may sue unto the King to have the Custody of her Sisters part during her Non-age, and to sue Livery of the other moity and thereupon she shall have a special Writ unto the Escheator, rehearing how the King hath taken her Homage, and hath assigned unto her the moity of the Lands, &c. which apper-

tained

tained unto her for her part, and that he hath committed the Euftody of the other part unto her during the Non-age of the Heir the other Coparcener, commanding the Escheator by the Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seifin of the moity unto the Heir of full age, untill the full age of the other Coparcener within age, with the issues and profits of the other moity from the death of the Ancestor. And thereby [263] it appeareth, that when the other Coparcener within age cometh of full age, they both shall sue forth a new Livery

joyntly. See the Register; fol. 320.

And it appeareth by the Register, that if a man hath Lands in London in Fee, and hath iffue two Daughters, and leafeth the Lands for life, and dieth, and afterwards the Tenant for life dieth, the Daughters of full age, and all the fame be found by Office; the two Daughters shall sue forth a Writ of Livery for those Lands, because they are holden of the King in Burgage, and the Writ shall be directed to the Escheator, commanding him to make Partition of those Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the same Writ he shall command the Escheator, that he retain the part of her who is indebted in the King's hands, untill he hath other command, and that he deliver the other part unto the other Daughter; reciting in the same Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover by the same Writ the Escheator shall be commanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, &c. and that he return the whole matter into the Chancery under his Seal, &c.

And if the King's Tenant who holdeth of him in Capite in Fee dieth, and hath iffue three Daughters his Heirs of full age, and another Woman who holdeth in Dower other Lands for term of her life of the affignment of her Husband, which Lands are also holden of the King in Capite, dieth, and the Reversion of those Lands are the Inheritance of the faid Daughters; they shall have one Writ of Livery unto the Escheator for all those Lands, reciting the whole matter and how that he hath taken their Homage and Fealty, or that he hath respited the same till a certain day, &c. and that he render to them their parts, commanding the Escheator that he take Security of them for to pay their Reliefs, &c. and that he make equal Partition betwixt them in their presence, if they will appear, and that he give full Seifin to each of them of their parts; with fuch a provision, that each

of them shall have part of that Rent which is so holden of the King in Capite for her part, so that each of them be Tenant to the King, &c. And it appearerh by that Writ, that a Rent may be holden of the King by Knights Service in Capite, as well as Lands. See the Register, fol. 318.

## Writ de Dote assignanda.

THE Writ de Dote assignanda lieth where it is sound by Office, that the King's Tenant was seised of Tenements in Fee or in Fee-tail the day he died, &c. and held of the King in Capite; then the wife may and ought to come into the Chancery, and there make Oath that she will not marry without the King's Licence; and thereupon the King may affign her Dower in the Chancery of those Manors and Lands, and thereupon she shall have a Writ unto the Escheator where

the Lands are, which shall be such:

Rex Escheatori suo in Com. B salutem. Sciatis quod de terris & tenementis qua fuer. N defuncti, qui de nobis tenuit in capite, & que occasione mortis ejusdem N capt. sunt in manum nostram, affignavimus I, que fuit uxor præd. N, tertiam partem Maner. de T & C in Com. T cum pertinent', necnon iij. partem purpart.que fuit ipfius N Cur. libertatis Honoris Winton' & vif. franci pleg. in dicto com.T, habend.in Dotem, ipfam de Maneriis & purparte præd. secundum Legem & conf. regni nostri Angliæ contingent'; necnon de affensu Ed. Principis Wallia, filii nostri chariffimi, tustod. Maner. de R in Com. Buck', qu. adl. li. & Manerii de N cum pertinent.in dicto Com.B.quæ ad x. li. extendunt. per annum, ficut per Extentas inde de mandato nostro fact', de in Canc. nostram retorn', est compert', assignavimus præf. I dict. Maner. de N cum pertinent.pro dote sua dictorum Maner.de R & N habend. in forma præd'. Et ideotibi præcipimus, quod eidem I dictum Maner. de N cumpertinent. liberes babend. in dotam fuam. ficut præd. est. Tefte, &c.

And when the Wife hathmade her Oath in the Chancery, Differ may have a Writ of Dote assignanda to the Escheator, to assign her Dower: and the Writ shall recite, that she hathmade her Oath in the Chancery, &c. But the use is to make the Assignment of the Dower in the Chancery, and to award a Writ unto the Escheator, to deliver the Lands assigned unto her; and although the King doth commit the custody of the Land unto another, yet the King may assign Dower unto the Wife in Chancery, and she shall have a Writ unto the Escheator to deliver unto her that Dower, as appear-

eth by the Register. And the Writ shall be such:

Rex Escheatori, &c. falutem. Cum inter cater terras & tenement. I, quæ fuit uxor N defun Eli, qui de nobis tenuit in capite, per nos de terris & tenement.quæ fuer.præd.N in Dotem affignat', assignaverimus eidem I partem Maner. de Grouby cum pertinent. in Compræd', necnon tertiam partem purpartis que fuit ipsius N Cur.libertatis Honoris W, & vision franci plegii in eodem Com', habend. in dotem in forma prædict': Tibi præcipimus, quod eid.I, cujus facrament quod fe non maritabit fine licentia nostra recepimus, dictas tertias partes in Ballivatua, in prasentia custod. eorundem Maner' & tertiæpartis, per vos inde præmuniend', si interesse voluerit, vel attornati sui in hacparte, assignar. & liberari fac', habend. in dotem sicut prædistum est; & cum Assignationem illam, &c. Teste, &c. And if the Wife after the death of the Husband doth come into the Chancery, and prayeth her Dower there; the King may grant a Writ unto the Escheator, com- [264] manding him to take Security of the Wife, that she do not marry her felf, and that the Escheator do assign Dower unto And the Writ shall be such:

Rex Escheatori, &c. Pracipimus tibi quod, capto sacramento M, que fuit uxor W defuncti, qui de nobis tenuit in capite, quod se non maritabit fine licentia nostra, eid. rationabil. Dotem suam,ipsam de omnibus terris & tenem. quæ præd. W quond. vir suus tenuit in dominico suo ut de seodo in Balliva tua die quo obiit, & que per mortem præd.W capt.fuer.in manum nosiram,& in manu nostra sic existunt, secundum Legem & cons. regni nostri Angl. contingent'. per Extent inde fact' ,vel aliam si necesse fuer. iterato faciend in prasentia B, per te inde pramuniend', si interesse

voluerit, affign. fac'; & cum Affignation. ill. fic feceris, eam sub

figillo tuo distincte & aperte mittas, ut eam in rotulis Canc. noftra, prout moris eft, irrotul. faciamus. Tefte, &c.

And if a man dieth feifed of Lands which are holden by Knights Service, of any Manor, or otherwise, as of any Abby, Bishoprick or Priory, or such as are in the King's hands by reason of vacancy of the Abby or Bishoprick,&c. then if the Wife will have Dower, the ought to fue in the Chancery, to have such Writ directed unto the Escheator, to assign her Dower; but there the Wife shall not take Oath, that she shall not marry without the King's Licence, as appeareth by

the Writ: which is such:

Rex, &c. Pracipimus tibi quod A, que fuit uxor B defuncti, qui de Abbatia de Burgo S. Petri nuper vacantis, & in manu no-Straexistent', tenuit per servicium militare rationabil. Dotem fuam de omnibus terris & tenement', &c. que præd. B vir fuus tenuit de Abbatia præd.in Balliva tua die quo obiit, & que post mortem ipsius B in manu nostra existunt, &c.ut supra.

And

And the like Writ may be fued by the Wife for Lands which her Husband held by Knights Service of the Manor of him who is in Ward to the King; by reason of his Non-age; but there she shall not make Oath, that she will not marry

her felf, no more than in the case before.

And the King may affign Lands in Dower in the Chance- E ry, rendring Rent yearly to the King, &c. because the Lands do exceed the very value of the third part of all the Tenements whereof the ought to have Dower. And then upon that Affignment made in Chancery she shall have and sue fuch Writ to the Escheator.

Rex Escheat', &c. Sciatis quod de terris & tenementis quæ fuerunt E de B desuniti, qui de nobis tenuit in capite, & que occasione mortis ejusdem E capta sunt in manum nostram, assignavimis M, que fuit uxor prædict. E, Maneria subscripta, videlicet Maneria de B & C, &c. cum pertin.in Comitatu T, que ad centum libras extenduntur per annum, habend. in Dotem, ipfam de terris & tenement. præd. secundum Legem & conf. regni nostri Angl.contingent', reddend.inde nobis per annum ad Scaccar. nofrum tantum aund excedit dotem suprad'. Et ideo tibi præcipimus, quod eid. M dicta Maneria cum pertinen liberes, ei babenda in dotem fuam in forma prædict. Tefte, &c.

And if the Wife be impotent, fo as the cannot come into C the Chancery to make Oath, and to demand her Dower, then The may fue a special Writ directed to certain persons to take her Oath, and to receive Attorney for the Wife to fue for her Dower in the Chancery, &c. and the Writ appeareth

in the Register, fol. 298.

And if the King make Livery unto the Heir at his full age, D faving unto the Wife her Dower to be affigned by the King; then if the Wife will demand Dower, the ought for to fue for the same in the Chancery; and if she do demand her Dower there, then shall issue a special Writ unto the Escheator, that he warn the Heir for to be in Chancery at a certain day,&c and there the Wife shall have the same day to receive her Dower, &c. And the Writ which shall issue against the Heir fall be fuch:

Rex Escheat', &c. Cum Dominus Ed. nuper Rex Angl': pater noller, xx. die Januar. proxim. preterito ceperit Ho-mag. T de B, filii & hered. T de B defuncii, de omnibus terris & tenementis quæ idem T pater suns tenuit de dicto patre nostro die quo obiit, &c. & terras & tenementa illa reddiderit eaque fibi mandaver. liberari, falvo jure cujuflibet, & Salva M, que fuit uxor prad. T, rationabili Dote sua, ipfam de terr. & tenement. præd. fecundum Legem & conf. regni

regni nostri Angl. contingent', & ei prout moris est assignand, ficut per inspectionem Rotul. Cancell. dicti patris noftri nobis constat; ac præfat. M nobis supplicaverit, ut ei Dotem suam, ipsam de terr. & tenement. præd. contingent. secundum Legem & conf. regni nostri Angl', assignari faciamus, per quam diem dedimus præf. M, quod fit in Canc. nostra in craftin. Animarum, Gr. ubicunque, Gr. ad recipiend. Dotem fuam prædict': Tibi præcipimus, quod scire fac. præf. T, quod ad diem præd. intersit Affignat. Dotis præd', fi fibi viderit expedire; & habeas ibi nomina, &c. & hoc Breve Teste, &c.

But if the King maketh Livery unto the Heir by his Writ directed to the Escheator, by which Writ he commandeth his Escheator to deliver unto him Seisin of all his Land, &c. Salvo jure cujuslibet; and he putteth not in the Writ these words, salva M, quæ fuit uxor, &c. rationabili dote sua, ipsam de terr. & tenem', &c. contingent', & per nos assignand': then in that case the VVise ought to sue her VVrit of Dower against the Heir, if the will demand Dower of those Lands, because the King made Livery generally of those Lands by his VVrit, [265] without any refervation of Dower to be affigned by him, &c.

And if the King make a refervation of Dower to be affigned by him by his VVrit of Livery which is directed to the Efcheator, if the VVife never demand Dower, or if the hath Dower affigned unto her by the King in Chancery, yet after the Affignment made by the King, the reversion thereof is in the Heir, and he shall not sue Livery of that Reversion after the death of the Tenant in Dower, because the VVrit of Livery doth not referve any thing to the King but Affignment of Dower to the VVife, but the VVrit doth command the Escheator to deliver Seisin of all the Land, and that the Escheator doth, and by that the Livery of all the Land paffeth from the King; and therefore it followeth, that when the VVife is affigned her Dower by the King in Chancery, that yet the Reversion doth remain in the Heir, &c. for which he shall not sue a new Livery of that Reversion after the death of the Tenant in Dower, &c. Tamen quere of that case.

And if the VVife be affigned Dower in the Chancery, and affigned to afterward it is furmifed by the Heir, or by another for the evicted, the King that the Land affigned to the VVife is not extended to mall have a the very value, but that the Land affigned to her is much more Scire fact as in value than it is extended at, and that the Lands which re- to re-feife main in the King's hands are extended to the very value, &c. the Land, then the King shall fend a VVrit to the Escheator to make a and shall be new endownew Extent: and upon that VVrit returned, if it be found ed. 43 Aff. that the Land affigned to the VVife is of greater value, 32.Br. Dow-

If the Land 80c. er 65.

&c. then upon Return thereof a Sciri facias shall be awarded against the Wise, to shew cause wherefore she shall not be anew endowed, &c. and if she be warned, and maketh default, it seemeth she shall be new endowed for her default; or if she appear, and cannot say any thing contrary to that new Extent, she shall be endowed anew, so as part of the Land assigned to her shall be taken from her at the King's pleasure; or the King may make a new Assignment of all that she had in Dower, if he pleaseth, and a new Writ shall be to the Sherist odeliver her Scisin thereof, so newly assigned to her: Quart the use of this point.

And if the Wife make Oath that she will not marry her self C without the Kings Licence, and is endowed upon the same, &c. and afterwards she marrieth without Licence, &c, then the King shall send a Writ to the Escheator, that he re-seise all the Lands which she holdesh in Dower, as appeareth by the Register, and not all the other Lands which she or her Husband had in their own right; and the Writ is such:

Rex Escheatori. & C. Cum A, quæ suit uxor I de B desuncti, qui de nobis tenuit in capite, quæ nuper sacramentum præstitit corporale, quid se nom maritaret sine licentia nostra, jam se W de P maritaverit, licentia nostra super boc non obtenta, ut accepimus, os, contemptum bujusim nolentes transire impunitum, necnon indemnitati nostra volentes prospicere in bac parte, tibi pracipimus, quod si ita est, tunc omnia terras & tenementa quæ præd. W A tenent in dotem ipsus A de bæredit, præd I in Balliva tua sene dilatione cap in manum nostram, ita quod de extibus inde provenientibus nobis respondeas ad Scaccar nostram, quousq; nobis de sorisfastura ad nos inde pertin. satisfast, suer, vel aliud inde duxerim, demandand. Teste, & C.

### Writ de Levari facias.

THE Writ of Levari facias is a Writ which shall issue out of D the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is. As if a man be bounden in a Recognisance in the Chancery in 201. to be paid at the Feast of S. Mich. next sollowings then if he do not pay the money at the day, a Levari facias shall be directed to the Sherist, that he levy the sum on his Goods and Chattels: and the form of the Writ is such:

Rex Vicecom', &c. Quià I, filius B, solvisse debuit M de B E XX.1. in Festo S. Michaelis, anno regni nostri, &c. sicut constat nobis per inspection. Rotulor. Cancell. nostræ & eas ei nondum solvit, ut dic'; Tibi præcipimus, quod præd. pecuniam

de

de terris & catallis ipsius I in Balliva tua fine dilatione levari facias, ità quod eam babeas in Cancell. nostra in crast. Nativ. S. Johan. Bapt.prox.futur', ubicung; tunc fuer', præf. M ibid.liberava': & hoc nullatenus omittas: & habeas ibi hoc Breve.

F And he may have an Alias, and a Pluries, Vel causam nobis fignifices, directed to the Sheriff; and if he will not return

the Writ, he shall have an Attachment against the Sheriff. G And this Writ is given by the Common Law before the Stature of West. 2. which gave the Writ of Elegit. But this Writ ought to be fued within the year after the day of payment to be made by the Recognifance; for after the year and day of payment to be made, if he do not fue forth this Writ, then he ought to have a Writ of Debt before the Statute of West. 2. which gave the Scire facias against him who was so bounden by Recognisance; but now by that Statute he shall have the Writ of Scire facias to make him come at a certain day into the Chancery, to shew what he can say why H he ought not to pay the fum, &c. And if the Sheriff upon the Levari facias return that he hath levied 10 l. of the fum, &c. which he hath delivered to the party, &c. then upon that Return he who ought for to have the money may fue forth a Sicut alias levari facias directed to the Sheriff, for [266]

to keep the refidue of the fum; which Writ shall be fuch:

Rex Vic', &c. Quia T, Abbas de B, solvisse debuit R centum libras, &c. in Festo, &c. anno, &c. sicut constat, &c. & eas, &c. per quod tibi præceperimus, quod præd. pecuniam de terris & catallis ipsius Abbatis in Ballivatua sine dilatione levari fac', ità quod eam haberes in Canc', &c. ubicunque, &c. præf. R ibid.liberand'; ac tu nobis retornafti, quod cepifti, in manum nostram per diversas vices de bonis & catallis ipsius Abbatis ad valenc', &c. qu. inde tevasti, & præf. R habere fecisti; Tibi præcipimus, quod resid. debiti præd. de terris & catallis ipsius Abbatis in Balliva tua fine dilatione levari facias, ità quod illud habeas coram nobis à die, &c. ubicunque, &c.praf.R ibid. liberand': & hoc nullatenus omittas, &c. Teste, &c.

And if a Parson be bounden in a Recognisance in Chan- 12 H. 4. 24. cery in 200 l. to pay at a certain day, &c. and he doth not 13 H.4.17pay the same at the day, then the Recognisee shall have a Levari facias directed to the Bishop, or a Levari facias directed to divers Bishops, to levy the money of his Spiritual

goods; and the Writ shall be such :

Rex venerabili in Christo Patri, &c. falut. Quia I, Perfona Ecclesia de S, com. H, vestra Dioc', & T de L, Persona

Ecclesta de M, Com.de B, Dioc. Linc', solvisse debuer.magistro F ducent.libras in Festo Omnium Sanctorum, &c. anno, &c. sicut constat, &c. ut dicit; Vobis mandamus, quòd centum & viginti marcas de sum præd.de bonis & catallis ipsus I in dicta Dioc. vestra sine dilatione levavi sac', it à quòd easdem centum & viginti marcas babeamus in Canc. nostra ubicunque, &c. præss ibid.liberand': & hoc nullatenus omittat': & habeatis ibi hoc Breve. Annadavimus etiam W, Linc. Episcopo, quòd ipse centum & viginti marcas, &c. residuas de bonis Ecclesiasticis ipsus T in dicta Dioc. levari saccret in sorma præd'. Tesse, &c.

But if the Parson hath Lands of his own purchase, he may B have a VVritto the Sheriff to levy the same, &c. But now by the Statuteof West. 2.6.21.18. he may sue forth an Elegit upon the Recognisance made in the Chancery directed to the Sheriff, to have Execution of the moity of his Lands, and of all his Goods and Chattels, except his beasts of the Plough, and to deliver them to the Heir for his maintenance; and the

form of the VVrit is such:

Rex Vicecom', &c. Quia R undecimo die Feb.ult.praterito in Cancell. nostra recognovit se debere N viginti libras, quas ei solviffe debuit in Fefto, &c. tunc prox. fequenti, ficut conftat, &c. Cancell.nostrie, & eas ei nondum folvit,ut dic'; ac idem Najuxta Stat.inde editum eligit fibi liberari pro prad. viginti libris omnia catalla & medietatem terræ ip fins R, tenend. juxta formam Stat.præd': Tibi præcipimus, quod catalla ipfius Rad valenc. prædaiginti librarum, per rationabilem appreciation. eorundem, exceptis bobus & afris caruca, in prasentia prad. R, per te indè pramuniend'. si interesse voluerit, jaciend', praf. N vel suo certo Attornato fac.liberar": & fi catalla illa ad valenc. præd. viginti librar non sufficient, tunc catalla illa sic minus valenc per rationabilem appreciation', ac etiam medietatem terræ ipsius R in Ballion tua per Extent.similiter in præsentia tua in forma præd. faciend', praf. N vel di lo suo Attornato fac. liberar', tenend. ut liberum tenementum fuum, quousq; dictum debitum inde fuerit levatum. Et de eo quod indefec.nobis in dicta Cancell. nostra tali die, ubicung; tunc fuerit, jub sigillo tuo distincte & aperte con-Stare facias : & habeas ibi hoc Breve. Telte, &c.

And after the year and the day of payment passed of c the Recognisance, the Recognisee ought for to sue a Scire facine against the Recognisor, to shew what he can say why the Recognisee should not have Execution; and if he be returned upon that VVrit warned by the Sheriss, if he do not appear, or if he do appear, and cannot say any thing wheretore he should not have Execution, then the Recognise

nifee may fue forth the VVrit of Elegit to have Execution of all his Goods, and of the moity of his Lands: and if the Sheriff return the Elegit, that the Recognifor hath made a Feoffment in Fee of part of the Lands to divers Tenants, &c. and that he hath enfeoffed the King of the refidue; then upon that Return the Lands whereof the King is feized by that Feoffment are discharged. But he may sue a Scire facias to warn the other Tenants to appear at a certain day, to Thew cause wherefore the said Lands shall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot fay any thing; &c. to bar the Execution, then the Recognifee shall have Execution against them of those Lands by VVrit of Elegit, &c. but he shall have the Elegit before that he sueth the Scire facias against those Tenants.

And if a man be bounden by Recognifance in the Chancery, and the Recognifor hath certain Indentures of Defeafance, then if the Recognifee will fue Execution upon the Recognisance, the Recognisor may come into the Chancery, and shew the Indentures of the Defeafance, and that he is ready to perform them, and thereupon he shall have a Scire facias against the Recognisee returnable at a certain day in the Chancery; and in the same VVrit he shall have a Superfedens directed to the Sheriff, that in the mean time he do not Execution by virtue of the VVrit fued forth by the Recognifee. And if the Sheriff upon any fuch VVrit return, that he hath fent to the Eaily of the Liberty to do Execution, which Baily hath returned him no answer; then upon that | 267] Return he shall have a new VVrit directed to the Sheriff, with a Non omittas therein, that he enter the Franchise and do Execution, &c.

And a man may fue Execution by Scire facias upon a Recognifance made in the time of another King in the Chancery, or in the Common Pleas, or in the Court of Record. And the King may by his Commission give authority to one to receive a Recognitance of another man, and to return the fame into the Chancery; and by virtue of that Commission i a man doth before the Commissioners acknowledge a Debt to be paid to another at a certain day, &c. and certifie the fame into the Chancery with the Commission, &c. then upon the Certificate thereof, if he do not pay the Debt at the day, he shall have an Elegit npon the Conuiance so taken, as well as if it were taken in the Chancery: and the form of the

Committion is fuch: Rex dilecto de fideli fuo R de Mfalut. Sciatisq ind dedim.

vobis potestat. recipiend. Recognic. quam I de H cor. vobis facere voluerit G de T de quacunque pecuniæ summa; & ideo vobis mandamus, quod cum Recognillam receperatis, nos inde, ac de die five diebus folutionis, necnon de die caption. ejufd', in Canc. nostra, sub sigillo vestro, distintte & aperte reddat.certior', boc Brev. nobis remittentes. Teste, &c.

And there is another form thus: Rex, &c. Sciatis quod dedimus vobis potestat. recipiend. bac vice, nomine nostro, Recognition. quam I de T de quocunque debito facere voluerit coram vobis; & ideo vobis mandamus, quod sum Recogn. illam

ceperitis, nos ind. sub sigillo vestro distincte, &c.

And by that Commission he hath general authority to take Recognisance of any man who will acknowledge any debt before him to any person whatsoever, &c.

If a man be bounden in Recognifance in 100 l. to payB See before at five several days 20 l. then immediately after the first 130. H.

So note that Capias ad Saisfactend, lieth not upon a Recognisance. 34.H. 6.45. 48 E. 3.14.

cution 42.

day of payment is past, he may sue an Elegit for 20 l. and at the second day he may sue another Elegit, or Levarifacias of other 20 l. and fo of all the 20 1. every day of payment, and he shall have such Writ of Elegit for the payment

vi. 38 E.3. that shall be made at that day, and shall not stay his Suit till 12 Br. Exerall the days of payment are past.

And if two be bound in Recognisance in Chancery, viz. C quilibet eorum in folid. recogn. se debere, &c. he may sue several Scire facias against them to have the money levied of their Goods and Lands, &c.

If a man be bound in a Recognifance in Chancery or other D Court of Record, and afterwards the Recognifee dieth; his Executors may fue forth Elegit to have Execution of the Lands of the Recognisor. And if the Sheriff return that the Recognifor is dead, then the Executors shall sue a special Scire facias against the Heir of the Recognisor, and against those who are Tenants of the Lands which he had at the day of the Recognisance made; and that Writ of Scire facias shall recite and shew that the Executors who sue the Writ have elected to have the moiety of the Lands which the Recognisee had at the making of the Recognisance: and the form of the Writ is:

Rex Vic, &c. cum I de W, tali die & an', &c. in Cancell. nostra recognovit se debere N, nuper Duci Lanc', cent. libras, quas ei solvisse debuit in Festo, &c. tunc prox. futur', sient constat, &c. & eas ei nondum solvit, ut dicit', ac W,B,& C. Exec. præd. nuper Ducis defuncti, juxta Stat. indè edit, eleger. sibi liberari pro pr.ed. cent. libris omnia catalla & me-

dietat.

dietat.terræ ipsius I W, tenend. juxta form. Statuti præd'; per quod tibi præceperimus, quòd scire faceres præf. I de W, quòd esset in Cancell. nostratali die proximijutur', ubicunq; &cc. ad ostend. se quid pro se habere vel dicere sciret, quare omnia catall. sua somedietas terr. sue præs. Execut. propræd. cent. sibirs i siberari non deberent, juxta form. Statuti præd'; ac tu nobis retornaveris, quod præd. I de W mortuus esset. Tibi præcipimus, quòd scire fac. Hæred. ipsius I de W, necnon Tenentibus terr. quæ fuit ejusa. I de W die kecogu. præd', quod sint in Cancell. rostra, &cc. proxim ssuur', subicunque, &cc. ad ostendend. se quad pro se habeant vel dicere sciant, prape mediet. terræ quam ipsi tenent de terrapræd. præs. Execut. pro præd. centum libris liberari non debeant, juxta som. Stat. præd. Et habeas ibi nomina illor. per quos, &cc. Teste, &cc.

And thereby appeareth, That if a man be bounden in a 14 H. 7.16. Recognifance, &c. although that the Recognifee dieth, yethis 15 H. 7.16. Executors cannot fue forth an Elegit to have Execution of the Recognifance within the year after the day of payment, without fuing forth a Seire facias againft the Recognifor, &c. But againft the Heir of the Recognifor, or the Terre-tenants, the Recognifee or his Executors ought to fue forth a Seire facias &c. otherwise if they be oused, &c. by such Execution of their Lands, they shall have an Assisted Novel dissipling, &c.

## Writ de Idemptitate nominis.

E THE Writ de Idemptitate nominis lieth, where a man is fued in a personal Action, and upon the Capital or Exigent awarded, another man, who beareth the same name, is arrested by sorce of the Writ, then he who is so directed shall sue forth this Writ of Idemptitate nominis; and this Writ shall be directed sometimes to the Escheator, if he or his Goods be arrested by him, or unto the Sherist, if he be vexed or molested by him, and the form of the Writ is such:

Rex dilecto sibi I de S, Escheatori suo in Com. Linc', salut', Cum nuper, ut accepimus. I de R de Lond. Taverner jam defunctus, ut dic', oro eo quod non venit. coram Justic. nostris de Banco ad respondend. R de tempore quo suit Receptor denarior. isplus R, in Exigend. positus suisset in Hustingo nostro Lond. ad utlazand', ce ed occassome die Lunae proximo post Festum S. Petri in Cathedra anno regni nostri decimo, utlazatus; ac jam ex parte I de R de Lond. Baker intellexerimus, quod licèt ipsenon sit idem I de R

qui ad sectam ipsius R utlagatus fuit, nec aliqua bona seu catalla que sucrunt ejusdem utlagat, ad manus suas devener'; tutamen, propter Idemptitatem bujusmodi nominis de cognominis I de R, pretendens ipsum I de R de Lond. Baker

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effe eundem I de R de Lond. Tavern'; qui fic utlagatus fuit, bona & catall. ejufdem I de R de Lond. Baber, colore ejufd. Brevis nostri; de bonis & catallis que pred. I de R de Lond. Tavern. habuit in Ballivatua die promulgationis utlagar. pradict. in manum nostram capiend', in manum nostram seisire intendis, & ipsum ea occasione multipliciter inquietas minus juste in ipsius I de R de Lond. Baber dampnum non modicum & gravamen; super quo nobis supplicavit sibi per nos de remed. provid': Et quia ipsum I de R de Lond. Baker indebite prægravari nolumus, tibi præc', quod si per inquisition. vel alio modo legitim. tibi constare poterit, præd. I de R de Lond. Baker non effe eundem I de R de L Tavern. qui sic utlagat. fuit, nec aliqua bona seu catalla que fuerunt ejusdem utlagati die promulgationis utlagaria pradict. ad manus suas devenisse. ut est dictum, tunc captioni bonorum & catallor. ejusdem I de R de L Baker occasione utlag. prad. in man. nostram supers. omnino. Proviso semper, quod de omnibus bonis & Catall. que præd. I de R de L Tavern. habuit in Balliva tua die promulgac. utlagar. præd', fi quæ fuer', nobis refp', ut est juftum. Teste, Oc.

And so if a man be distrained by Process out of the Ex-A chequer for to accompt, &c. for another person who hath the same name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer, and

the Writ shall be such:

Rex Thefaur. & Baronibas fuis de Scaccar. falutem. stravit nobis I Clerke de N, quod cum quidam I Clerke nobis in quod. Compoto de exitibus passagii Viridis castr. reddendo die quo obiit tenebat', qui quidem J Clerke mortuus eft, & vocabat. dum vixit | Clerke de A, ut dicit', ac pro eo quod præd. | Clerke de N habet idem nomen & cognomen ficut præf. Clerke de A, ad reddend. nobis Compot. de exitibus præd. multiplicit. inquietari facitis minus jusie, ut accepimus, super quo idem I Clerke de N nobis supplicaverit, ut sibi de remedio in bac parte subvenir. velimus: Nos tam pro nobis quam pro præf. J Clerke quod justum fuer. fieri volentes in hac parte, vobis mandam', quod si per aliqua memorand. dict. Scaccarii, vel per inquisitionem inde, si necesse fuerit, capiend, inveneritis ipsum J Cl. de A Commission.nostram de Officio illo habuisse, & exitus indè prætextu bujusmodi Commission. nostræ aut alio modo recepisse, & ipsum J Cl. de N bujusmodi commiss. nostram non habuisse, nec se inde in aliquo intromisisse, & ipsum J Cl. de N propter Idemptitat. nominis & cognominis, & non alia de causa, coram vobis impetit. fuisse; tunc ipsum J CI. de N ad reddend. nobis compotum de exitibus prædict. ad idem

idem Scaccar, prout justum suerit, exonerari & quietum esse sacr, Processum debit. vers. præf J Cl. de A, si superstes sit, vel bær, executores, seu terrarum & tenementorum ipsius J Cl. de A, si mortuus suerit, tenentes, juxta juris exigent. sacientes. Teste, &c.

And if a man be taken by a Capias utlagatum, he may sue forth a Writ de Idemptitate nominis in the Chancery directed to the Justices of the Common Pleas, if the Process be sued there, or unto the Justices of the Kings Bench, if the Process be there, commanding them to make enquiry, &c. asasfore is said,&c. so as this Writ seemeth but as a Commission to make enquiry, and to know the truth; and upon that Writ directed to the Justices, they shall award a Writ unto the Sheriss to make the Enquiry,&c. but if a man be Outlawed in the Common Pleas, and taken by Capias, he may come into the Common Pleas, and pray a Writ of Enquiry whether he be the same person, without suing the Writ de Idemptitate nominis.

And if an Exigent be to be awarded against one, if one who hath the same name come and saith that he is ready to answer, then the Plaintiff may say that he is not the same person, and then the Plaintiff shall put a diversity of the Names, and the same shall be entred, and then the Exigent shall be awarded according to that difference which the

Plaintiff hath made.

At the Exigent returned the Defendant appeareth by Supersedeas, and the Plaintiff saith, that he that appeareth is not the same person: And the opinion of Hanke was, that he shall be put to his Idemptitate nominis, and shall not that

way avoid the Outlawry.

And if an Exigent be to be awarded upon an Indictment, if one come and faith, that he hath the same name as he against whom the Process upon the Indictment is awarded, and prayeth that the Kings Attorney may put a difference of their names; the same shall not be done, for that should change the Indictment, because the Process ought to be made according to the Indictment; and if he be grieved by the Process, he must sue forth the Writ de Idemptitate nominis, and shall not have other remedy, sec. And he may have that Writ to the Justices of the Peace if they award Process of utlagery upon Indictments taken before them, and also to the Justices of Gaol-delivery, as appeareth by the Register, fol. 195, 196.

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## Writ de Homagio respectuando.

The Writ of Respite of Homage lieth, when the Heir A comes of sull age who holdeth of the King in Capite, and ought to sue his Livery, then the Order is, that he first do Homage to the King, and thereupon to have his Writ of Livery to the Escheator; but the King of grace and favour may respite his Homage as he pleaseth: And thereupon he shall have a Writ unto the Escheator tessifying the same, and commanding him to deliver him Seisin of the Lands; and the Writ shall be such:

Rex dilecto, &c. Escheat. suo, &c. salutem. Schas quòd respectuamus Homagium I, soror. & bær. I, silii T de B, defuncti, nobis de omnibus terris & tenem. quæ præd. I frater suus tenuit de nobis in capite die quo obiit debitum, usque ad Festum S.Michael. prox. sutur, & terras & tenem. illa ei reddidim. Et

ideo vobis mandam', quod accepta Secur', &c.

#### Writ de Haretico comburendo.

Ote, it appeareth by Britton in his Book, that those B persons shall be burnt who seloniously burn others Cornor others Houses, and also those who are Sorcerers or Sorceress; and Sodomites and Hereticks shall be burnt: And it appeareth by that Book, lib. 1. cap. 17. that such was the Common Law. But note, that the person who shall be burnt for Heresic ought to be first convict thereof by the Bishop who is his Diocesan where he dwelleth, and abjured thereof, and afterwards if he relapse into that Heresic or any other, and thereof be condemned in the said Diocess, then he shall be sent from the Clergy to the Secular Power, to do with him as it shall please the King, &c. And then it seemeth the King, if he will, may pardon him the same. And the form of the Writ is such:

Rex, G. Majori & Vic' London. salutem. Cum venerabilis C pater, Thom. Archiepiscopus Cantuar', totius Angliae Primas, & Apostolicae Sedis Legatus, de consensu & assensu ac constitue Episcoporum & Constatrum Susfragan. suorum, necnon totius Cleri Provinciae sua in Concilio suo Provinciali congregat', juris ordinibus in bac patte requisit. in omnibus observat', W Sawtr', aliquando Capellanum, in Hares, dampnat', & per ipsum Willielmum praantea in forma juris abjurat', & ipsum Will. in Haresm prad' relaps, per suam sententiam definitivum Haresicum manisestum pronunc. & declarav', ac degradandum fore

fore decreorit, da ab omni prærogativa & privilegio Clericali ea de cauja realit. degradaverit, ipsumque Will. Foro Seculari relinquendum effe decreverit, & realiter reliquit, juxta Leges & Canonicas Sanctiones editas in hac parte, ac Sancta Mat. Ecclesia non babet ulterius quid fac.in pramis': nos igitur, zelator justitie & Fidei Catholica cultor, volentes Ecclesiam Sanctam ac jura & libertates ejufdem manutenere & defendere, & hujusmodi Hæreses & Errores de Regno nostro Angliæ (quant. in nobis est) radicitus extirpar, ac Hareticos sic convictos animadversione condigna punirezattendentesque hujusmodi Hæreticos in forma pred. convictos, & damnatos juxta Legem divinam & humanum canonica institutione, & in bac parte consuetudinar, ignis incendio comburi debere; vobis distinatins quo possimus pracipimus, firmiter injungentes, qued praf. Will', in cultodia vestra existent', in aliquo loco publico & aperto infra Libertat. Civitatis præd.causa præmissa cor populo publicieni commit, ac ipsum in eod. igne realit. comburifac', in bujus criminis detestationem, aliorumque Christianorum exemplum manifestum : & hoc Sub periculo incumbente nullatenus omittatis. Tefte, &c.

And by that Writ it appeareth, that a man ought to be convicted of the Herefie by the Arch-bishop and all the Clergy of that Province, and abjured for the same, and afterwards anew convicted and condemned by the Clergy of the fame Province, and that in their General Council of Convocation. But now by the Statute of Hen. 4. cap. 15. it is enacted, That every Bilhop in his Diocess may convict a man of Herefie, and abjure him, &c. and afterwards convict him anew thereof, and condemnhim, and warn the Sheriff or other Officer to apprehend him, and burn him, &c. And that the Sheriff or other Officer ought to do the same by the precept of the Bishop, and without any Writ from the King to do the same. And that is the cause (as it seemeth) that that Writ is not put in the new Registers, because that Writ ought not at this day to be fued forth, but is as it were void by reason of the said Act.

But now by the Stature made Anno 25 H. 8. cap. 14. that Statute which was made in 2 H. 4. is repealed and made void. And now it is enacted by this late Statute, That he who is abjured for Herefie, and afterwards falleth into Relapse, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Laypower to be burnt, without the King's Writ first obtained for to burn him, as appeareth by the faid Statute of 25 H. 8. 270] cap. 140. more at large.

# Writ upon the Statute of Marlebridge for a Fine for Non fair pleading.

THE Writ upon the Statute of Marlebridge for not fair A pleading lieth, where the Sheriff or other Baily in his Court will take a Fine of the party, Plaintiff, or Defendant, because he did not plead fairly, &c. and the Writ shall be directed to the Sheriff himself, or Baily, or him who will demand such Fine; and it is a prohibition to him, commanding him that he do not demand such Fine; and it may be sued by the whole Hundred, or by all the County together, where he will require such manner of Fine of them. And the Writ is such:

Rex Vic', &c. Chm de communi confilio, &c. provif. sit, quod B nec in itineribus Justic', nec in Com', Hundred', vel in Curia Baronis de exetero ab aliquibus capiantur Fines propulcire placitand', neque per sic quod non occasionent': Tibi præcepim', quod ab W hujusmodi Finem de catero non exigas, vel exigt sacias, contra form. provisionis præd'; & Districtionem, si quam, &c.

And for the Hundred the Writ shall be such: Tibi præcipimus, quod à communitate Hundredi de I bujusmodi Finem de catero non exigas, vel exigi facias, contrasorm, &c.

And by the Rule in the Register it may be against every C other man who will distrain for such Fine, and he may have an Alias, and a Pluries, and an Attachment upon the same: and if after the first Writ of Prohibition delivered he distrain for such Fine, then the party who is distrained may such forth an Attachment against the Sheriff or Baily, or him who distraineth him and the form of the Attachment is such:

Rex Coronatoribus suis in Com.Linc. salutem. Si A fecerit, & c. tunc ponite, &c. B, Vic. nostrum, vel Vic. nostrum Com.pradict, quod sit cor. Justic. nostris, &c. ostens, quare cum de communi constito, &c, [usque ibi, ab aliquibus non capiantur Fines pro pulcher placitand, neque per sic quod non occasionent,] idem Vic, vel idem B, distrinxit præs. A probujusmodi Fine prastand. in Com.prad, cont. som. provision. præd, ac cont. prohibic. nostram. Et habeas ibi, &c. & Averia ipsus A ea occasione capta interim deliberari sac. Teste, &c.

But note, that he may fue forth that Writ of Attachment against the Sheriff, or other, although that he never fuerh forth any Writ of Prohibition before directed to the Sheriff, or Bailiff, but then he ought for to be distrained

for that Fine; for the Statute in it self is a Prohibition to Attachment the Sheriff, and to all others, that they do not distrain for upon a Profuch Fine for fair pleading; but if the Sheriff, or other, hibition. Br. demand such Fine, and doth not distrain for the same, vid. 9 H.6. then he cannot have a Writ of Attachment for such de-61. & 19. mand made, because he is not damnified by the demand, H. 6. 54. &c.

# Grants made by the King expressed and contained in the Register, to be remembred.

DREX Ballivis & probis hominibus Ville de P salutem. Sciatis quod de gratia nostra speciali concessimus vobis in auxil. Villa præd.paviand, quod à die confectionis præsentiam, usque ad finem quinque annorum proxim.sequent.plenariè complendorum, capiatis in eadem Villa Consuetudines subscriptas; viz. de quolibet Sunnag, &c. Et ideo vobis mandamus, quod Cons.prædictusque ad finem termini prædict.capiat, ut prædict.est; completo autem termino distor. quinque annor, dicta Cons. peritus cessent & deleant. In cujus, &c.

## Grant of a Stewardship.

E REX, &c. Sciatis quod concessimus dilecto & fideli nostro W de U ossicium & regimen Seneschalcia, &c.cum omnibus ad dictum ossicium pertin, quamdiu nobis placuerit: Et ideo vobis mandamus, quod eid. W in omnibus tanquam Seneschall. pareat, respondeatis, & fideliter intendatis. In cujus, &c.

## Grants of Letters Patents.

SEE in the Register notable forms of Grants of Letters
Patents made by the King in divers manners, especially
amongst the Writs of Ad quod damnum, and also after the
Writs de Corrodio babendo. And there is a Patent made,
De custodia Foresta Regis, in recompensationem certa summa,
alicui per Regem ad vitam suam concessam.

And other Patents there made upon Indentures between the King and others, upon a borrowing of money by the King, by which Patents the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the first Benefice which shall happen void is such:

Rex

Eix Cancellario suo qui nunc est, vel qui pro tempore sueret, vel custodi magni Sigilli, satur. Promotionem dilecti clerici nostri A, pratestu boni servic. sui tam Dom. Edwardo quondam Regi Angl', avo nostro, quam nobis impensi, cordit. assectates, acvolentes ipsum à pramissa consideratione savore prosequi sticum, taxationem viginti marcarum excedens, vacaturum, quod ad Prasentac. nostram pertinuerit, & quod duxerit acceptand, prasenteur. Et ideo vobis mandamus, quod eidem A Literas nostras de Prasentac. ad primum Benesicium Ecclesiasticum vacaturum, quod ad nos se pertinuerit, e quod duxerit acceptand, subprad. magno Sigillo nostro in forma præd. babere saturi. In cujus, &c. Teste, &c.

But such Grants are not in use at this day.

A Grant of the King to one of his Chaplains of a yearly Penfion out of the Exchequer, until he be promoted unto

a Benefice, is thus:

Rex omnibus ad quos, &c. sa'ut'. Attendent. grata & laudabilia obsequia quæ dilestus Clericus noster A nobis ante bæc tempora gratant. exhibuit, super quibus tam per dilectum & sidelem nostrum W, quam alios sideles nostros, sumus certitudinatier informati, sperantésque; quod in nostris agend. suæ assective benevolentiæ puritate continuabit successivis actibus in sutur', ac volentes ipsum munere prosequi gratioso; concessimus ei quandam annuam Pensionem xx. marcarum percipiend. singulis annis ad Scaccar. uosirum ad Festa Paschæ & S. Mich' per aquales portion', quousq; ei per nos suerit provisum infra regnum Angl' de Beneficio Ecclesiastico quod duxerit acceptand. In cujus, &c. Teste, &c.

There is another Grant in the Register, fol. 295. made by B the King to one, to give him authority to reconcile the Kings Enemies who have left their Obedience, and adhered unto other the Kings Enemies, &c. and to grant Pardon to them;

and the Grant is such:

Rex universis & singulis, &c. ad quos, &c. sal. Sciatis quòd nos de sidelitate probata & circumspectione provida diletti & sidelis nostri Antonii Lucy plenariè considentes, dedimus eidem Antonio plen. tenor. præsent. potestat, nomine nostro recipiend. ad sidem & pacem nostram homines de partibus de Galloway in Scotia, ad sidem & pacem nostram non existent', & alios qui eissenden Scotis contra nos adhærent, seu adhæserunt, &c cum eis contra nos de inimicitia nostra fuer', & qui ad sidem & pacem nostram venire voluer', & quos ad sidem & pacem bujusmodi sor. viderit admittend'; & Literas de Pardonatione dictarum adhæsionis & inimicitia, necnon de hujusmodi admissione ad

pacem

pacem nostram, eisdem hominibus prosecuritate sua in hac parte nomine nostro saciend'; ratum & gratum habitur. quisquid idem Anton. secerit nom. nostro in pramiss. In cusus, &c.

Tefte, erc.

There is another Grant made unto one of the Custody of a Castle, and the Ammunition therein, for what time it shall please the King, and a Writ thereupon directed to him who had the Custody thereof before, to deliver to him the Castle, and the implements and things appertaining to the same.

And you may see there the Fatents made to Sheriffs to be Sheriffs of the Counties, and also the Patents made to the Escheators of the Counties, and also the Writs to the old Sheriffs and Escheators to deliver unto them the Rolls

and Writs.&c.

B

And Letters Patents of Attendants unto Archbishops, Abbots, and all others, to be Attendants unto them in those things which do appertain to their Office. The form of Nomination to be made by the King to any Abby or other person. Of one to be Vicar, and that the Abbot do present him over to the Ordinary. And also the form of Revocation made by the King of that Nomination. And also the form of the Write which the King sends to the Ordinary to admit of that Revocation, and to admit another person by another Nomination. All these appear in the Register, fol.302.

And divers other Presentations made by the King, and also Revocations of his Presentation; and also Nominations made by the King in his own right, or in the right of others, are there in the Register: and Grants made by the King of Donatives, and the Writs directed unto the Sheriffs to put them in possession: and Writs there to the Ordinary, to assign unto a Prebendary Stall. in choro, & locum in capitulo, who hath the Prebend by the Kings Collation: and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in

possession as Incumbents,&c.

And many forms of Writs made to Abbots or Bishops, to have yearly Pension for his Chaplains, until they are promoted to Benefices: and the Writ to the Chancellor, to present in the Kings name such a one, the Kings Chaplain, to the first Avoidance of any Benefice which shall be void, which appertains to the King: and also Grants by the King to receive a yearly Pension out of the Exchequer.

And

# Grants of Letters Patents.

And divers forms of Writs of Proxy are in the Register, E to sue, defend, or answer, &c. or to refign a Benefice, &c.

And the form of the Refignation, &c. and the form to F make Protestation when a man will refign his Benefice, &c. appear in the end of the Register in fol. 302, and in other folio's there following.

And so endeth this present Treatise, called New Natura Brevium, which Book fully declares the Natures of the Original Writs contained and expressed in the Register.

FINIS.

